IN THE

Supreme Court of the United States

October Term, 1973

No. 73-898

NORVAL GOSS, et al.,
Appellants.

v.

EILEEN LOPEZ, ETC., et al.,
Appellees.

On Appeal from a Three-Judge United States District Court for the Southern District of Ohio, Eastern Division

INDEX

Relevant Docket Entries iii

Original Complaint (March 31, 1971) i

Motion to Dismiss (April 19, 1971) 15

Memorandum Contra Motion That Three Judge Court Hear Motion for Temporary Restraining Order (April 19, 1971) 25

Opinion and Notification of District Judge (September 27, 1971) 34-35

First Answer Filed (April 7, 1972) 37

Stipulations of Fact (October 10, 1972) ---------- 44
Stipulation of Parties (January 26, 1973) ---------- 58
Motion to Strike Stipulations (May 25, 1973)------- 59
Deposition of John Ellis (July 13, 1973) ---------- 61
Deposition of Philip Fulton (July 13, 1973) -------- 84
Proceedings Before Honorable Joseph P. Kinneary, Including Exhibits ---------- 119
Defendants Exhibit B ---------- 286
Motion of All Defendants to Dismiss (July 17, 1973) 287
Amended Complaint (August 31, 1973) ---------- 292
Answer of Substitute Parties (September 12, 1973) 303
Opinion of District Court Included in Jurisdictional Statement at Pages 22-66
Order of District Court Included in Jurisdictional Statement at Pages 20-21
Judgment of District Court Included in Jurisdictional Statement at Pages 18-19

Q. Excuse me. You said that whites had left the building? A. The whites moved across the street, across Kobell Road, which is approximately forty yards, roughly.

Q. And what were they dong there? A. They were standing and defying and mimicking and generally having a spontaneous time. My school communicating agent, Mr. Collmer, Mr. Gill, and I worked with the groups—with both groups, the black group inside and the white group on the outside. It was raining at the time. At this time we notified the superintendant of schools of our problem. At this time we asked for the task force, which is a group of educators working out of the downtown office primarily who relate well to students, who would come in and help decide what the problem was and attempt to resolve it. We also asked for police help to alleviate the problem of these over-age people driving around the outside in the automobiles harassing and intimidating both groups really. The students refused to follow the **(page 13)** orders to return to school.

Q. These are black students? A. These are both black and white. They refused to follow orders to return to school. They said they could not now.

A decision was made by me that we should attempt to communicate with them. We talked to the leadership people of the group. The leader of the white group was Mike Sanborn. Bill Taylor was the leader of the black group. They agreed that the white students would report to the auditorium for discussion. The black students would report to the gymnasium for discussion. They picked five white students and five black students who came to my office. We discussed the problems and concerns. At the time, it was decided that white students would report to the auditorium. The five white students and the one leader from each group was to report to the

office group. This was the group's communication and their agreement.

Q. Do you have the names? A. Mike Sanborn was, I think, was the young man who went to the blacks. I think Bill Taylor — I don't have this documented. I am going on what I remember. This was about a couple of years ago. The **(page 14)** leader from the opposite group, the white leader, talked to the black group; and the black leader talked to the white group. They decided they would like to come together and communicate. In the meantime, the security, the Columbus police, the safety director, Mr. Hughes, was outside the building. They eliminated the problem of the outsiders. I don't know what the dispensation — how they did it. I was not able to be outside and inside and everywhere, but they took care of the police function which was not my function in the first place.

The outsiders were cleared out and all of the people that did not — would not follow directions were threatened with arrest, so the students cooperated and we had the two groups which communicated with rap sessions which were developed then through these two groups of five. We ended up with both groups in the auditorium. This was not the entire school. We had three-fourths of the school in class with their teachers. We had other teachers operating this matter. Safety, certainly of the teachers and all of these students not creating the problem, was uppermost in our mind. They went about the business as they could and attempted to have education in this kind of **(page 15)** disturbance.

Walter and Clifford Tyree came to the auditorium. Both spoke to the group and did an effective job with the white and the black students and did alleviate a lot of whatever pressure there was. The students were attempting to respond, and in many cases the animosity

from the black to the white and the white to the black diminished to some extent.

At 10:30 the school was dismissed officially so that the other students could leave. They were dismissed in an orderly fashion, thinking of the safety of each student as they left. The auditorium was left as a spot to communicate until 10:30. This was agreed to and this was communicated to the students. By 12:30 all students had left the building. It was without any kind of bloodshed or physical confrontation.

Q. Did you address the group at the auditorium? A. Yes, I did.

Q. Could you tell us briefly what your comments were to the group? A. I can't tell you other than I discussed with them the purpose of education and why they were **(page 16)** in school. I also said that we were not going to permit disrupters to control the educational process for the students that were in Marion-Franklin High School and told them that the proper way to deal with any kind of agreements. This was again a situation that had been set up beforehand.

Q. What was that procedure? A. This is: They meet with the principal or his designated designee and bring the agreements to him. If this is not satisfactory, they may go to the administration in the downtown office or if they desire then, they may go directly to the superintendant of the Board of Education. This policy has been established.

Q. Is that a written policy? A. I believe. I can't state the number, but I believe it is written and is in the book that you have.

Q. That was in effect at the time that this took place? A. Yes, sir.

Q. Okay. A. The administrators and the teachers, we meet with parents for conferences. We had a great num-

ber of parents that were concerned. We met with **(page 17)** these groups and then planned. We tried to hear the grievances and alleviate the fears of people who wanted to send their people to school for education and also to attempt to terminate the problem.

The school was closed then on Friday. We had discussions with the teachers concerning the problem, helping them to understand the situation since they were not involved other than to be where they were assigned and with their students. We also met with groups who had requested time to come in and to talk with us.

Then on Monday, we reopened. This was Monday, March 15. The students were told, as I reported earlier, that unless they came to school on Monday with the intention of going to class and following their procedure, then they should not report. So on Monday at 9:00 then, I was again called to the auditorium. We had about — I can't remember — eight or ten home rooms. We had our home rooms located in the auditorium. There are black students who had gone to the auditorium and had taken seats in the auditorium which disrupted completely the possibility of having any kind of a home room situation because they were occupying seats which had been assigned for home room. **(page 18)**

Q. Were there any whites in that group? A. Not as far as I know, no. There were whites in the home room, but there were no whites in this particular group that had been organized to come in and take over the auditorium.

At this time again I was called.

Q. Excuse me, sir. You said the group that had been organized. What evidence did you have that they were an organized group that had specifically designed to take over the home room? A. Well, I was told that this was their function as I came in, that they were not going to the home room.

Q. Okay. A. Names were taken.

Q. Who told you that? Excuse me, who told you that? A. A student by the name of Ronald Carter.

Q. Is he a black student? A. Black student.

Names were taken then. I told the students that they had been forewarned of possible disciplinary action if they did not report with the intention of going to school and following their regular programs. We started to take names of the people that did not **(page 19)** belong here. At this time Ron Carter asked me, "If we report back to home room, will be permitted to go without suspension?"

They reported to their home rooms. The students all left and went back to their home rooms.

Q. How many students were there in this group? A. I really don't have that here. I can't recall. I would assume probably thirty to fifty maybe.

Q. How big is the auditorium? How many can you seat? How many can you seat in the auditorium? A. I think that auditorium seated between six and seven hundred, someplace in there.

After the home room bell rang, the auditorium then was used for classrooms or was used as a classroom. The black students returned to the auditorium. Again, they were told to report to class. They were told three different times to report to the auditorium and again refused.

Q. They were told to report to the auditorium? A. Report to their classroom. No, they were to report to their classroom. The auditorium — the **(page 20)** band used the auditorium as a classroom. First period they were told to report to their assignments. They all had a particular assignment.

Q. Who told them this? A. I told them this.

A student informed me that they were tired of listening to me, and now, I was going to listen to them. They were going to tell me what was going to be done.

Again they were told to return to their classes. The students continued to stand up and cite and interfere with what I was attempting to do. At that time then he was told that he was to be suspended from school for his disruption of the educational program.

Q. What was the name of that student? A. That was Tyrone Washington.

He was told to report to the office which he refused to do. At the time we had security officers in the building. This had been announced by way of the P.A. system also during the morning home room announcements. Of course, many of the students had communicated with these people early during the day. These security officers, Columbus police officers, were asked to remove Tyrone **(page 21)** Washington from the auditorium. At this point the security men were attached by a student and his father.

Q. Did you personally observe that? A. I personally observed this, right.

Q. What was the name of the student? A. Rudy Sutton and Floyd Sutton. Floyd Sutton was a postman who delivered mail to this particular school and had no reason to be in the building at the time — in this part of the building particularly — but was there.

At this time I was also struck by a student as I went to the rear of the auditorium to aid the security man. The names of the students who were involved in these disturbances and the attack were then taken and these people were dealt with individually.

Q. How many people are you talking about now? A. I would have to check. I would say — I am not sure whether this is the number at this particular time or not — but I would say there were between ten and fifteen involved in the incident of the attack of the police officer and on me and in the sitting and continued refusal as far

as leadership in preventing people from going about **(page 22)** their assigned duties and being able to report to their classes.

Q. Did you personally observe? Did each one of these fifteen become suspended, or was each one of these, realizing that figure is an estimate. A. I personally did not; I have two assistants and I have several teachers working with me who also observed incidents. No, I did not observe each one. These were dealt with as the teachers and as the assistant principals observed what went on also. This is why I assume there probably would be this number, but this was the observable number. These were the people who were actually being disruptive that we did see and can be verified.

Q. Could you give the names of the people who were observing? A. By me, by Mr. Gill, by Mr. Collmer. There were several teachers there who, again, I can't recall their names at this time.

Q. Were each one of these students suspended? A. Each student involved in the attack and involved in the ensuing riot was suspended from school.

Q. Each person that reported to you by the people you have just previously named as having been **(page 23)** participants were suspended? A. That is right.

School was attended with approximately seven hundred students. We continued the school day this particular day. By the end of the day, we still had about seven hundred out of approximately twelxe hundred fifty students remaining at that time.

I had a meeting of concerned parents. These were all black parents. Jay Carter, Taylor, Abbotts, and Blacks in my office. I met with nine black representatives at the church of that particular community and over the city. We met with parents. We had a meeting at the church. At that meeting I spent most of the evening. Again, this

was composed of black and white parents so that we were involved in community groups at that time attempting to alleviate and solve the problem. There were fourteen students suspended or recommended for action by the Pupil Personnel officer.

Q. Could you tell us what the role of the Pupil Personnel Office is? Are you talking about the office? A. By our pupil personnel, I mean, our people that work with our pupil personnel.

Q. At your particular school? **(page 24)** A. Right.

Q. You are not referring to the Pupil Personnel of which Mr. Goss is the head at the present time? A. No, No. The action that we refer to them were our people dealing with our attendance and such. We have the right people that we were discussing and then communicated with the parents relative to this, and then made our recommendations from that point.

Q. Who was in charge of pupil personnel at that time? A. That was Mr. Gill. He worked with the attendance. That was one of his responsibilities.

At that time, we called the parents. We notified parents of these people and arranged conferences with each parent involved.

Q. Was this — this was done telephonically? A. This was done over the telephone, right.

This was the prodecure that we followed. We suspended someone; we called the parent immediately. At 5:00 at the South Side Church of Christ, I went with Mr. Harper, one of the teachers, and Mr. Flinn, another teacher.

On Tuesday, March 16, the students returned **(page 25)** to classes and we had little, if any, distraction. We had one fight which took place in the English class between a black and white student, Terry Thomas and Joseph Carr.

Q. Were either of those students suspended? A. They were both suspended from school. They also did damage. They went through a window at the school.

I had a conference that day also with committees from the community where we went in the school including Reverend Jones, James Carr, Ms. Abbott, Ms. Reed, Ms. Gibbs, Mr. Harper, and myself, and my assistant. At noon on that particular day we had a bomb scare called in, and we took the prescribed action there.

On Wednesday, March 17, the students were picketing the area across the building with signs. We had no incidents. They did not create any physical problems neither for teachers or for other students. It was a peaceful picketing of a few students. Again a very limited number. All students were in by 8:30, and we had the regular class schedule. We had a mother call that day and say that she had heard that there would be a bomb scare taking place in the lunchroom. We notified our **(page 26)** security people and took the necessary precautions there. There were students wearing anti-administration badges which again was a peaceful way of reacting to the situation.

That day we had a small fire in the waste can in the rest room. Again we called the police and juvenile bureau of the fire department who reacted then. Again that was a procedure that we must follow. At that time we also had to, of course, evacuate the building.

Thursday, March 18, we had picketing in front of the school again, off the school property. No disruption, it was a peaceful picketing which was permitted without harassment from anyone inside of the building. Again they were in the building in time for their first class. We had an organized plan for related grievances and reporting to the administration to the school which included an opportunity for rap sessions in every English class

throughout the building. The students were permitted to write or to relate anonymously, whichever they wished, their concerns which were again organized and brought in to the administration for recording at a later date to talk about these problems and concerns. They had a fire started in **(page 27)** Room 204, whch was an art room, which was in a container.

Q. Excuse me. You were just beginning to mention fires. Had there been any fires on the 15th? A. No, sir. The first time that I mentioned them was the first one that we had.

The arson squad was again called, and again we had to go through our procedure for fire drills.

On Friday, March 19, we were informed by a student that there would be a peaceful disruption to be held in the morning. We called again for help from the downtown office if necessary. The teachers were kept informed of what was happening. Of course, we reported one hundred percent with the administration and what we were doing in attempting to continue to operate the building as a positive educational experience. On that date, Inspector Miller of the Fire Prevention Bureau was there and followed up the waste basket fire in the art room.

Q. Were any students suspended during these periods? A. No, sir. On Monday, March 22, we had a completely normal day at school. On Tuesday the pickets were back. There were some pickets, but no **(page 28)** problems. Everyone was in by eight-thirty. This was Tuesday, March 23. On Tuesday, March 23, we told the students we would report to them by classes. We met first with the senior class in the auditorium. While I was talking to the senior class, one row of black students stood up as I was speaking to the class and repeated the black pledge. They were led by student Bill Taylor, who gave several verbal sounds and then led the students in their pledge — turned their back and gave the black pledge and then

proceeded to walk out of the auditorium. There were about thirteen all together. I don't have the number here.

Q. Were any of those students suspended? A. Yes, sir.

Q. Which ones? A. The students who left the auditorium were suspended. They left the auditorium without permission. They were suspended. Bill Taylor was suspended from the stage. He was the one that I could identify at that time. We had one student, Mr. William C. Harris, and Ms. William Harris and their attorney came in. This was in about ten minutes of this incident. We had a hearing for this particular case, at that time. **(page 29)**

Q. Was that an unusual sort of procedure? A. I would say that was unusual when someone comes in with an attorney, yes, this is unusual.

Q. What was the common thing? A. Well, can I finish what I am doing here?

Q. Sure. A. At that time Marion Harris was suspended until Thursday, March 24. At that time Mr. Harris stated that there would be legal action taken before the suspension.

Wednesday, March 31, 1971, we received a registered letter from William F. Harris. We had a fire attempt that was started in the wrestling mat, but easily put out. Again, we had to follow the fire procedure. Inspector Miller was informed and was involved in the follow-up. James Brown, known as Nomos X — he is a member of the militant black organization — asked to see me, which we permitted him to do since he did have a sister in the building although he does not reside with that sister. He was in discussing programs of the operation in general of the school. He said it was a concern of his and his organization.

Friday, April 2, 1971, we had a fire started in Room 200. The fire department was called **(page 30)** again at that time. We had apprehended a student by the name of

John Fox for setting the fire. He was referred to the proper officials. Again, he was suspended from school and referred to the fire department. The fire department took the official action as far as Court case. I cannot tell you the dispensation of the Court case.

On Wednesday, April 28, we had —

Q. May I interject? I think we have gone chronologically well past the time that we were particularly concerned with. I appreciate the information. A. That was the last day. From that point on we had a positive school experience. We finished the school year in a positive manner. We completed our school assignments and graduated our senior class as expected.

Q. I am going — you may or may not know. There are some seven named Plaintiffs in this case who attended Marion-Franklin that were suspended. I am going through each one of these and ask you a few questions concerning the suspensions. A. All right.

Q. I will start with Deborah Fox. Could you tell me the date that she was suspended, the **(page 31)** information relied upon for suspending her, the procedures utilized in doing so? A. Do you want her complete record of suspensions before this time or leading up to this time or one specific suspension?

Q. We are talking about the suspension on March 10. A. Beginning with the first period, Deborah was very loud and disrespectful.

Q. Were you personally present? A. She was shouting specific remarks to the assistant principal, Mr. Collmer, such as — this is in a large group of people — "I hate you," and so forth, and contributing greatly to a disturbance and refusing to go to classes. She continued this behavior through period 4.

At about noon she again confronted Mr. Collmer. She was one of the people who was involved in this earlier

disturbance and they eventually had a sit-down. She was still making negative comments at this time in the cafeteria where we had our lunch program. Again she started shouting at Mr. Collmer, "I hate you," and the same kind of things that she had perpetrated in the morning and during the other periods when she was **(page 32)** refusing to go to her assigned classes. She continued to disrupt the school.

Mr. Collmer at this time, told her to report to the office. Again she refused. Mr. Collmer finally contacted the mother who came to the school to pick up Deborah.

Q. At that time, had she been suspended? A. At the time, she was suspended. It was just a matter of physically removing her from the school.

Q. And there would you have met with Deborah yourself prior to suspension? A. Would I have met with her?

Q. Mr. Collmer? Did Mr. Collmer meet with the mother prior to the suspension? A. He talked to the mother prior to suspending her. While the mother was there, she also disrupted the office after coming to the office with loud and abusive language and again disrupted the whole office procedure and everyone in the office.

Q. You personally witnessed that? A. I heard it as well as witnessed it. She again made derogatory remarks to Mr. Collmer and also was rude to Mr. Gill, my assistant principal, who was attempting to work and try to get her quieted **(page 33)** down. She also was rude and disrespectful to him.

She was suspended then with recommendation for another school placement.

Q. That was made at that time of suspension? A. This was at the time that her mother was in to talk to us, right.

Q. Was this March 10? A. This was March 10, 1971.

Q. Did you talk to Deborah in your office or elsewhere? A. In the office, right.

Q. With her mother? A. I had talked on different occasions with the mother. Mr. Gill had communicated with Mr. Collmer. Mr. Gill had also talked with her and her probation officer, Ms. Howard, from the Youth Commission. We had communicated with her, and I also communicated with Ms. Howard after the suspension as late as the next year where we still worked with Ms. Howard. She really seemed to have the most influence with Deborah.

Q. At the time, did you tell her for how long she would be suspended? A. She was suspended for the ten day period.

Q. That was done right on that day? **(page 34)** A. That was done at that time with her mother, right.

Q. Okay. Was Mr. Collmer in the meeting? A. Yes.

Q. Okay. Continue on. A. Who is the next one?

Q. I have some further questions in respect to Deborah. The information we have is that she was suspended again on the 19th. A. Okay. That is right.

Q. Can you tell us what motivated that second suspension? A. She returned to the school with her parent again and repeated the same kind of behavor that she had repeated earlier, again being disrespectful of Mr. Collmer at that time and again being disruptive in the office and continuing the same tactics that she had used previously.

Q. She was ultimately transferred to South High; is that correct? A. Yes, sir.

Q. I think you may have testified to this effect, but I just want to clarify this. You mentioned on March 10, in terms of her being transferred, is that what prompted it? **(page 35)** A. She had a record which extended much beyond that particular day which indicated to us that her capabilities, as far as securing an education, were great.

She was a bright student, but she did not apply herself because she had a position of leadership which, for some reason, necessitated that she remain a militant and in an abusive type situation which did not permit her to carry on her school activities and which was brought about from her days in junior high school. The girls that followed her expected her to react, and it kept her in a complete state of incapacity to be able to communicate with her teachers, as she was capable. It was our assumption that she did have potential to learn and to achieve. In the environment that existed at this time, it was going to be impossible, therefore, for her best interest, we felt she should be transferred to a different school where she could perform; which I understand she did perform well.

Q. Were there any other meetings with her or her parents other than the ones on the 10th and the 19th which you have described? A. No, this is all I have here in front of me. This is — we have talked — we had parents in. **(page 36)** We talked to the parents by telephone. She had brought food in and was eating and swinging her lunch bag in the classroom.

Q. Were there any earlier — Doctor Ellis mentioned that certain schools had school codes of some sort. Was there such a thing in effect at Marion-Franklin at this time? A. What do you mean by code?

Q. Was there any sort of a written statement of prescribed activities by students? A. Yes. We have a handbook.

Q. And it was in effect during this March-April of 1971? A. Right.

Q. Could we possibly get a copy of that? A. I don't remember if I have that particular one or not. This is 1969-70. They were updated and each student, as they came to the building, each tenth grader in the building was given a copy of that.

Q. Might you have in your files a 70-71? A. This is what — I am not at that school any more. This is what I had in the file. That is why I brought it, and one for the new school, too.

Q. I assume you wouldn't mind if we ran off a copy of that or something? **(page 37)** A. No.

Q. A few more questions with respect to Debbie Fox. On March 10, you stated that she had periodically yelled and shouted, "I hate you," at Mr. Collmer. Did she engage in any activity? A. She refused to go to class. She was involved in areas where she did not belong.

Q. Mr. Collmer told you that? A. No, this is where she was.

Mr. Bustin: Did you se her?

The Witness: Did I see her in this particular situation? I don't remember whether they brought her to me or whether I was in that particular situation.

By Mr. Roos:

Q. You were the one that actually made the suspension; is that correct? A. I think Mr. Collmer probably made the initial suspension here. I don't have that. He would have done this after conferring with me. I am not sure whether I made it, or whether Mr. Collmer made the actual phone call. It was my decision that she be suspended.

Q. And on the 19th, could you describe in more particular detail what it was that Deborah Fox **(page 38)** did that resulted in the second suspension. A. She again created a disturbance in the office and refused to cooperate with Mr. Collmer and was again abusive and disruptive.

Now, I can't say because I was not there.

Mr. Crawford: The question was: Did you personally know?

The Witness: I do not.

By Mr. Roos:

Q. On March 15, according to our records, Clarence Byers was suspended from Marion-Franklin. Do your records correspond with that? A. Yes, sir.

Q. Again, as we did with Deborah Fox, I would like to know specific incidents. A. He was in the hall encouraging others to refuse to go to class and to do as he was asked to do. He was told to report to his classroom.

Q. Who told him to report? A. I did that personally.

Q. And he refused to go to his classroom? A. That is right.

Q. And that was the incident that resulted in his suspension? A. He refused to report and continued to **(page 39)** encourage others to not report and to continue to disturb us.

Q. Where did this occur? A. In the main hall of the school building.

Q. You mentioned, I believe, that at one time there were some students blocking the paths in the morning of the 15th. Was that the time that he was suspended? A. No, that is a different occasion. I talked to you about a different date.

Q. Okay. I think you are right. I am referring to the previous Thursday.

I would like a little more background on really what Byers did, at what time in the morning, and in the context of what you have already described as happening on the fifteenth, and previously given us a rundown of other details. A. I can't give you the exact time that this occurred. I don't have that documented.

Q. In the context of what you have previously told us about this thing that occurred on the 15th. A. He was included in this group that was early in the morning. I assume that was the day time. I do not have the exact times. I can't remember exactly what time it was. His mother

was called and **(page 40)** we conferred with her at that time also.

Q. Okay. A. This young man was one of my football players and had not been a militant or a disrupter. This was a different type of reaction for him.

Q. Did you make any note of the fact that maybe he had joined with the descendants in this particular incident? A. I would not make a judgement. I assume that he was convinced that what he was doing was right, he was still interrupting the school and preventing a normal operation of our school. He was at school later. He had represented the school in a number of things and did after the suspension.

In the following year he was my representative to the council that met talking about disruptions and working with students.

Q. You personally observed that that led to the Byers incident? A. It was face to face confrontation.

Q. And that was refusal to go to class? A. He refused to go, clear the hall, and refused to go to class and also made some remarks that incited others to do the same.

Q. Did you meet with his mother? **(page 41)** A. I met with his mother on several different occasions.

Q. Did you meet with her on several different occasions that morning? A. I can't say whether I met on that morning. I talked with her, and I talked with her previously. We talked later and again. The next year the mother was the one who was attempting to help maintain a positive atmosphere for education in that building.

Q. Do you recall Ms. Glenda Jackson being present at the time of the Byers suspension? A. Do I recall?

Q. Yes. A. I do not.

Q. She could have been or might not have been? A. She could have been or might not have been. I do not know Ms. Glenda Jackson.

Q. The same day, March 15, our records indicate that Rudolph Sutton was suspended. Do your records reflect the same thing? A. That is right.

Q. Could you tell us what facts were relied upon in suspending him? A. He was in the auditorium. Again I observed Rudy. I knew exactly where Rudy was seated. During the disruption in the auditorium on that date, he attacked the police officer — physically attacked the police officer — as the police officer attempted to remove a student who had been disruptive. With his father they knocked the police officer to the ground.

Q. Was the police officer in uniform? A. No.

Q. The police officers were not — they were not in uniform? A. They had been announced. We had told the students that we would have security people, as I told you previously, during the home room period. As I said before, they were there early in the morning and had communicated wth many students in the hall. So it was a known fact that there were policemen and that they were present to see that we did have a peaceful and orderly school day.

Q. Did you have any conversation with Rudolph on March 15? A. Mr. Gill, my assistant, talked with Mr. and Ms. Sutton on that day, I believe.

Q. Do you know where that conversation took place? A. In Mr. Gill's office, right. **(page 43)**

Q. Were there any other people present? A. The sister, Vicki.

Q. Vicki Sutton? A. Vicki Sutton and Mr. and Ms. Floyd Sutton.

Q. Now, how long was Rudolph suspended? A. He was reassigned to another school — another school assignment. I can't tell you the date that he reported to the other school. I had a conference with him on the 25th also. They had a conference with Mr. Gill on the 16th of

March. I had a conference on the 25th. At that time Rudy was told he would be reassigned to another school to complete his education.

Q. Was this as a result of the activities on the 15th? A. That is right. Again he was a football player who had — I had used as a hall monitor and had been able to react in a positive fashion and was recently decided that he had to get involved with the disruptive situation. Again we were interested in his continuing his education and get his high school diploma.

Q. Was there any correspondence sent to Rudolph by your office? A. Yes. **(page 44)**

Q. Do you have copies of the correspondence? A. No, I don't have anything. All I have got are these copies that I had from Mr. Gill's file.

Q. The conference on the 15th, was with Mr. Gill then? A. Mr. Gill, right.

Q. Were you in attendance? A. No, I was not.

Q. Had Mr. Gill been present at the time of the occurrence? A. Yes, he had. As I stated before, Mr. Gill and Mr. Collmer were all there.

Mr. Crawford: Let's take a short recess.

(Short recess.)

By Mr. Roos:

Q. Our records indicate that Susan Cooper was suspended on March 15. Do your records correspond with that? A. Correct.

Q. Can you tell us what facts were relied upon to suspend her? A. Again that was a face to face confrontation with me in the hall, same spot in the hall as we discussed previously.

Q. What took place at that confrontation? **(page 45)** A. Refusal to go to class, truant from her assigned responsibility. Insolence, refusal to leave.

Q. To where? A. To leave the hall to her assigned responsibility.

Q. So you told her to go to her class, and she said, "No," and that was why she was suspended? A. And she continued to encourage others to do the same again.

Q. She give you any reasons why she didn't want to go to her classroom or to leave? A. No.

Q. Nothing whatsoever? A. I have no record of anything like that. I don't recall anything of that nature.

Q. Did you suspend Susan Cooper? A. Mr. Gill did the actual suspending. I had to approve all of the suspensions.

Q. Do you know what procedure Gill used to suspend her? A. He called her to the office. He called the parent — contacted the parent — and followed up with a letter to the parent followed by the arranged conference which is in the letter. **(page 46)**

Mr. Crawford: Possibly we can save some time with Cooper and the rest by stipulating that the procedure used was basically the same through all the people.

Mr. Roos: I would like to go much quicker.

Off the record.

(Discussion off the record.)

Mr. Roos: On the record.

By Mr. Roos:

Q. For the moment, forgetting about Susan Cooper and named individuals, could you tell us what the general procedures were at Marion-Franklin for effectuating a suspension? A. The student would be given an opportunity to tell their side of whatever the situation might be with either an assistant principal or principal — whoever would be doing the suspension. After it was determined that there would be a suspension, then the parent is called. If the parent is not at home, then the student is retained at the school until such time that the normal

school day is over and the parent can be reached. The suspension is followed by a letter stating the reason for suspension, and if a conference has been prearranged **(page 47)** by the parent or guardian and the school, that is included in the letter to verify the time of the conference. The conference then would be held with the parent or guardian and student and satisfy completion of the problem.

Q. What facts dictated whether you or Mr. Gill or Mr. Collmer held the initial conference to suspend? A. Basically the assistant principals are the disciplinaries. They held the discipline in a given school. The majority of times the incident does not occur with an administrator. It occurs in a situation where a teacher refers it to administration. It would depend upon who was available, who the teacher may refer the incident to. It can be one or the other of the administrators.

Q. Okay. Taking — since we are dealing in general, taking a hypothetical suspension which you indicated ordinarily are initiated by teachers, what would be the step by step that would be followed? A. The teacher would send to the office in written form, and almost all schools in Marion it was to be written. We had a form that we followed indicating the incident, what had happened, and this was brought to the office at the time the student was **(page 48)** brought to the office. The administrator then would go over the incident as written or as dictated by the teacher with the student. The student then would be given an opportunity, if the student didn't agree with the way it happened, then he would send back for the teacher and bring the teacher in who if we have some reason to see if there is a discrepancy. We then ask the teacher to interpret what he has written for us. If there is a large discrepancy where the student would deny it and the teacher would confirm it, then we

would react upon this information according to what the teacher tells us. Then if it is deemed that there is a suspension, you follow the procedure that I have already formulated. You call the parent first and then send the student home. Again if we can't find the parent, we try to keep the student until his normal school day is over so they are retained until their school day is completed. The parent, if he can be contacted in the meantime, then would be informed of the situation. This would be followed then by a letter stating again what we would discuss but including also the time of the appointment, if it has been prearranged. If not, the parent may get in tomorrow. They might say that they can get in tonight and maybe have time **(page 49)** to see the administrator and that would be set up at that time.

Q. Now, the procedure that you were describing there is the procedure you used in ordinary situations? I mean, they are used not when the school is going up in flames, but in an ordinary suspension type of situation? A. Right.

Q. Now, you mentioned that if the student contested what the teacher said, the teacher then would be called in, or occasionally the teacher would be called in? A. Right.

Q. What would happen if there was still dispute? A. Then the teacher's word would be the deciding factor.

Q. Now, you mentioned that sometimes — strike that.

Assuming that there had been a suspension, then the phone call follows to the parent and then a letter is sent out the next day; is that correct? Or maybe the same day?

A. Same day — preferably the same day.

Q. How often are further conversations set up **(page 50)** with the parents? Is that fifty per cent of the time? A. I don't understand what you are asking me.

Q. It seemed to me that you stated that sometimes

further conversations are set up with the parent to dispose of the matter. A. This is ninety-five per cent of the time where the parent comes in to the conference with the administration to discuss the problem and resolve the problem. It is the parents' responsibility for the child, and we feel it is our responsibility to deal with them.

Q. However, the parents are informed of this subsequent conference? A. As I said, by telephone. If you can't contact them, we either ask them to give us a time or we will give them a time. We have a conflict, we call and arrange another conference.

Q. Traditionally, what is discussed at these conferences? A. The problem, the individual, we talk about their school record. We get their entire school record. We talk about their academic problems if they exist. We talk about their potential. We talk about their goals. It is a conference to remedy the **(page 51)** problem and you try to find a solution so that the student is successful in his schooling.

Q. Is it a conference to verify the facts supporting this suspension, or is it more a conference to determine future placement? A. No, because almost always placement is right back where they are. It is to communicate with the parent, as part of my responsibility, the problem that exists and ask for their help. We inform them and then find out what directions we can take that will eliminate the need for further problems.

Q. I see. I think we have pretty well discussed that.

I will proceed more quickly. I realize we are getting bogged down.

Our records indicate that Tyrone Washington was suspended on March 15; is that true?

A. That is true.

Q. Will you inform us on the facts in which the suspension was based? A. Tyrone Washington, a senior

student was in the auditorium approximately 9:05. The entire group in the auditorium had been told to report to their assigned classes. They refused. Tyrone **(page 52)** Washington stood at his feet and told me to listen to him that he had listened long enough to me and that they were going to tell me how it was going to be done.

At that time Tyrone was asked to leave and report to the office. He refused. The security officers were asked to remove him to the office.

Q. Okay. What transpired in the office? A. Well, as you remember, there was quite an incident before we got to the office. After reporting to the office, then Tyrone's mother, Ms. Vance, was in the building at that time. She was told at that time that he would report home with her that he was suspended. I had a conference and then on the 16th, Mr. Gill had a conference with Ms. Vance and Tyrone. I had a conference on the 25th with Ms. Vance and Tyrone. At that time he was referred to a different school placement.

Q. Okay. And this referral was as a result of the activities on the 16th? A. Continued disruptiveness.

Q. On the 15th? A. Right.

Q. Bruce Harris. Do you have his file in front of you? **(page 53)** A. He was suspended on the 23rd of March?

Q. Can you describe the activities that he was engaged in that resulted in his suspension? A. He was disruptive in the assembly program and walked out of the assembly that morning. He continued to be disruptive.

Q. Was he one of the students that gave the black pledge, if my recollection is correct? A. Yes, that is correct.

Q. Now, they gave — what is the black pledge? A. I can't recite the black pledge.

Q. I am not asking you to recite it. A. Yes, it is an oral statement with the right hand clenched and held out. I can't give you the wording.

Q. He, with several other students, stood up and gave the pledge and walked out; is that correct? A. Right.

Q. And it was because of that activity that he was suspended? A. That is right. This was still while I was talking to the entire senior class. It wasn't an isolated incident.

Q. I am going to show you a letter to Bruce **(page 54)** Harris received dated March 23.

Mr. Crawford: Do you want to mark it?

Mr. Roos: Mark this as Plaintiff's Exhibit 3.

The document referred to was marked for identification as Plaintiff's Exhibit 3 by the reporter.

By Mr. Roos:

Q. Okay. You have seen this. I am now handing you a copy of Exhibit 3. A. I have a copy of that yes.

Q. Is it possible for you to explain what the second paragraph of that letter meant?

Mr. Crawford: I will object. The letter is stated in evidence who wrote the letter. I will object to his explaining what somebody else intended by a paragraph from the letter not written by that individual. I will instruct the witness not to speculate. If he can read it that is all right, but don't speculate what somebody else had in their mind.

Mr. Roos: Well, are you instructing him not to answer? **(page 55)**

Mr. Crawford: I am telling him not to speculate. If you want to ask him on any rule —

Mr. Roos: Strike the question.

By Mr. Roos:

Q. Mr. Fulton, do you have an independent knowledge of a letter of November 6, that may have been used in determining the propriety of a suspension on the 23rd of March of 1971? A. Propriety of suspension?

Mr. Crawford: What is the question?

By Mr. Roos:

Q. The question is: Do you have any independent knowledge of the letter referred to in this letter, the letter being referred to as apparently November 6, 1970?

Mr. Crawford: Ar you asking if he has a copy?

Mr. Roos: Now I am asking if he has any previous knowledge?

The Witness: Yes.

By Mr. Roos:

Q. Do you have a copy of that letter with you? A. Yes, I do.

Q. Might I see a copy.

What was the procedure utilized in **(page 56)** suspending Bruce Harris?

A. The usual procedure. He was brought to the office and Mr. Gill communicated with him and attempted to contact his brother whom he was living with. His brother did not report.

Q. Do you know on what date that suspension ended? A. October 30.

No, that is a different one. March 30, March 30.

Q. Was he transferred, or did he return to Marion-Franklin? A. He did not return. He just did not return. He eventually transferred to Central Evening School.

Q. But he could have returned? A. He could have returned on the 30th to discuss the situation or to be reinstated for whatever dispensation would have been taken care of. But we had no further contact with the brother even.

Q. I have no further question of a more general nature. Not dealing with any particular student, the letters that we have in our possession — several of the letters which we have in our possession — indicate the students being suspended and are signed by the assistant principal, Mr. Gill, **(page 57)** Mr. Collmer.

Those — several of those — indicate I have suspended today. If you question me, I can show you. Would you like to see a copy?

We would like to know if that can be taken literally. What procedure is utilized — strike that.

Do you delegate the authority to these people to suspend pupils? A. That is right.

Q. Would it be — might they suspend them without consulting you? A. Right.

Q. Okay. Thank you very much. That is all. Off the record.

(Discussion off the record.)

Mr. Roos: On the record.

Mr. Crawford: With respect to Plaintiff's Exhibit 3, I don't know its probable identification. I don't know if it was identified at all.

Mr. Roos: Okay. Plaintiff's Exhibit 3 has already been marked. It is a letter dated March 23, 1971, from Oscar Gill to Mr. and Ms. Freddie Robinson and indicates that Bruce Harris has been suspended from school. (page 58)

Mr. Murphy: Are you familiar with that letter, Mr. Fulton?

The Witness: Yes.

Mr. Murphy: And is that written on Marion-Franklin stationary?

The Witness: Yes.

Mr. Murphy: And is that the signature of Mr. Gill that was under your employ?

The Witness: Yes.

Mr. Crawford: Note my objection to the admissibility of it. Let it go and leave it attached as an exhibit.

Mr. Fulton, you have the right to read this and go through before it gets introduced to the Court. If you would like to, you can waive your signature on it.

The Witness: I would rather look at it.

PHILIP FULTON

(Certificate of Court Reporter omitted in printing)

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Civil Action 71-67
(Title Omitted in Printing)

PROCEEDING

Before the Honorable Joseph P. Kinneary, Chief Judge, sitting at Columbus, Ohio, July 16, 1973.

(page 3)

DWIGHT LOPEZ,

called as a witness on behalf of the plaintiff, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Roos:

Q. Please state your name. A. Dwight Lopez.

Q. Mr. Lopez, were you attending Central High School on Friday, February 26, 1971? A. Yes, I was.

Q. On that date were you suspended from Central High School in Columbus? A. Yes, I was.

Q. Who suspended you? A. Mr. Parks, the principal.

Q. How did you find out that you were suspended? A. When I got home, there was a call to my house from Mr. Parks. When I was at home, there was a call to my house from Mr. Parks, stating that I was suspended.

Q. You were at home rather than at school? A. Yes, sir.

Q. Why were you at home? A. School was dismissed that day.

Q. Did Mr. Parks tell you personally that you were suspended? (page 4) A. No, he did not.

Q. He told you on the telephone? A. Yes.

Q. At the time that he called you, did he tell you of the reasons for your suspension? A. No, he did not.

Q. Did you do anything that day at the school?

The Court: What day are you referring to?

Mr. Roos: February 26th.

The Court: Is that the last day you were in school, Mr. Lopez? A. Yes, sir.

The Court: You may proceed. Did you go the full school day on that day? A. No, sir, school was let out around 10:30, 11:00 o'clock, sir.

The Court: The whole student body was dismissed at that time?

The Witness: Yes, sir.

The Court: You with them?

The Witness: Yes, sir.

The Court: All right. You may proceed. **(page 5)**

By Mr. Roos:

Q. On February 26th, did you do anything that violated any rules, to your knowledge, rules of the school or other rules? A. No.

Q. How many other students on that day were suspended, to your knowledge? A. To my knowledge, at least — well, a few that I know, 75 that I know personally but there were more.

Q. At any time prior to receiving the call from Mr. Parks, did you have an opportunity to tell your side of the story? A. No.

The Court: Why don't you ask him if there was a hearing conducted in connection with the suspension.

Q. (By Mr. Roos) At any time prior to the suspension by Mr. Parks, were you given a hearing to tell your side of the story? A. No.

Q. What was the first thing in writing which you received? A. I received a letter the next day after I was suspended from the school stating that I was suspended.

Q. Is that letter dated February 26? A. Yes, it was. **(page 6)**

Mr. Roos: Your Honor, that is Exhibit 1 A. It was agreed between plaintiffs and defendants that I would not have to identify it otherwise.

The Court: Fine. You may proceed.

By Mr. Roos:

Q. You received this after you had been suspended; is that correct? A. Yes.

Q. Did you receive a further letter dated March 1 from the school authorities? A. Yes, I did.

Q. That is Exhibit 1 B, Your Honor.

Were you already under suspension when you received this letter? A. Yes, I was.

Q. Did you receive a letter dated March 5 setting an appointment at Pupil Personnel for March 8th? A. Yes, I did.

Q. That is 1 C, Your Honor.

Were you under suspension at the time you received this letter? A. Yes, I was.

Q. At the time you received this letter, had you been out of school approximately a week? **(page 7)** A. Yes.

Q. Prior to March 8, 1971, did you have any opportunity to meet with any school officials? A. No, I did not.

Q. Did you keep the March 8th appointment? A. No, I did not.

Q. Can you explain why not? A. There was a rally at the Board of Education and we could not get in, my mother and sisters and I.

Q. Prior to March 24th, did you have any correspondence, either orally or in writing, from anybody at the school department, either at Central or anyone in the Columbus School System, did you have any correspondence whatsoever? A. No, I did not.

Q. Between March 8th and March 24th did you have reason to believe that you were suspended from school? A. Yes, there was — Well, at the rally they had at the Board of Education, the Board reinstated the students that were suspended, and they were to return to school. I did return to school that following afternoon.

The Court: On what date was that, the following afternoon, March the 9th?

The Witness: It was the day that I had the appointment set up for the Pupil Personnel, sir. **(page 8)**

The Court: That was March the 8th?

Mr. Roos: March the 8th, Your Honor.

The Witness: The students were to be reinstated but I went to school and they would not open the doors. All the doors were locked. I did knock or pound on the door and one teacher did come. I believe it was the gym teacher, men's gym teacher, and he wouldn't let us in. We told him that we were reinstated and he said that the school had no prior knowledge to us being reinstated and refused to open the door.

By Mr. Roos:

Q. During the period between March 8th and March 24th, did you and/or your family, members of your family, attempt to contact the school officials concerning your suspension? A. Yes. My sister wrote a letter and she called. My mother called, but as far as we could get was the secretary and she kept telling us that the guy, the head of Pupil Personnel, either wasn't in or he was busy, so that's as far as we could ever get.

Q. Were any of your calls returned? A. No, they weren't returned.

Q. On March 24th did you receive a letter transferring you to another school in the Columbus system? **(page 9)** A. Yes, I did.

Q. Had you requested this transfer? A. No, I did not.

Q. Were you given any hearing prior to the transfer? A. No, there wasn't.

Q. Did this transfer result in any difficulty to you? A. Yes, the difficulty would be when my mother and I went down to Adult Day School, that is to the school I was transferred to, the principal of Adult Day School did have the impression that I was definitely a trouble

maker, and he stated I would not be able to take any courses that I wasn't making a B average.

Mr. Bustin: Your Honor, I am going to object to what somebody else is saying. It is heresay.

Mr. Roos: Your Honor, it's not being offered —

The Court: Overruled. Go ahead.

A. Any subject I wasn't making at least a B average or above, I would not be able to take in Adult Day School. His attitude was bad, so I didn't go to Adult Day School. Instead I just didn't go.

By Mr. Roos:

Q. You ultimately did get into another school though; is **(page 10)** that correct? A. Yes, I did.

Q. When you did get in, did you have difficulty making up the work that you had missed during the time you had been out of school? A. Yes. I never did catch up fully to what I did miss and the change from one way of teaching to another made it a little worse than what I had already had.

Mr. Roos: Your Honor, the letter of March 24th is Exhibit 1 D.

Nothing further of this witness.

The Court: You may cross-examine, Mr. Bustin.

CROSS-EXAMINATION

By Mr. Bustin:

Q. Mr. Lopez, how old were you at the time that you were suspended? A. I was 19.

Q. Nineteen years of age.? A. Yes.

The Court: What year of school were you in at that time? A. My senior year, sir.

Q. What was taking place at the school at the time that **(page 11)** the whole school was dismissed? A. There was a student disruption.

Q. Did the Pupil Personnel Department make any attempt to set up a meeting with you on or about March

5th? A. Yes, there was. I did have — Well, I can't remember the exact date, but there was an appointment set up because I did receive a letter saying there was an appointment.

Q. Did you keep it? A. No, I did not.

Q. What was the nature of that communication that you received on March the 5th? Who did you receive it from?

The Court: Was it addressed to you or your parents? A. It was addressed to my parents.

The Court: What did it say? Did it request that you and your parents meet with the school officials? A. Yes, sir, that's the way it was.

The Court: Did it set up a date for meeting with them? A. Yes.

The Court: What was the date? A. March the 8th.

The Court: All right. **(page 12)**

By Mr. Bustin:

Q. When you appeared at the Pupil Personnel Department on March 8 — Let's say first: Did you appear there on March 8th? A. Yes, I did appear.

Q. Were your parents with you? A. Yes, she was, my mother.

Q. Your mother was with you? A. Yes.

Q. I believe your testimony is you did not keep that appointment? A. It was impossible for me to keep the appointment. They had the doors blocked with people, and I could not get in.

Q. Did you try to get in? A. Yes, sir. Yes, there was an attempt to get in.

Q. I didn't hear you. A. Yes, we did try to get in.

Q. Did try to get in. Who was blocking the door? A. The people in the rally, the people, several hundreds of people.

Q. Hundreds of people. Mr. Lopez, I take it you have graduated from Columbus Public Schools? A. Yes, I have.

Q. What date did you graduate, do you know? **(page 13)** A. I graduated June 10th of last year.

The Court: Of 1972? A. Yes, sir.

The Court: Does that mean there was a year's delay in your graduation? A. Well, sir, I was in night school and you can only take four subjects a night and each subject is half a credit.

The Court: When you did not go to the school to which you were ordered to go, after you were suspended from Central High School, wasn't it — A. Yes, sir.

The Court: — did you then decide to go to night school? A. Yes, sir, that's when I decided to go to night school.

The Court: How old were you then? A. Eighteen. Nineteen, sir.

The Court: Nineteen? A. Yes, sir.

The Court: So, at that age, did you have a choice as to where you would go to school? A. I don't understand, sir. **(page 14)**

The Court: Maybe you can inform me, Mr. Bustin. I think the compulsory age is 18; isn't it?

Mr. Bustin: That's right, Your Honor.

The Court: When an individual is 19, can they choose where to go if they are, let's say, academically eligible?

Mr. Bustin: The answer to that question is normally yes, the individual who is over the compulsory age would have a choice.

The Court: Then would you agree that this witness at the age of 19, when he chose not to go to the school to which he was ordered transferred, and instead chose to go to night school, had the right to do that?

Mr. Bustin: I would agree with that.

The Court: So, after you left Central High School, Dwight, you started to night school; is that correct? A. Yes, sir.

The Court: In relation to the 25th of March of 1971, when did you start to night school? **(page 15)** A. I started night school in September the same year, sir.

The Court: So, you didn't go back to school either in the day or the night after you were suspended from Central High School and until you started to night school the following September? A. No, sir, I couldn't get in because the semester had —

The Court: My question to you is: After you were suspended from Central High School on February the 26th of 1971, you did not go to school any place until the following September; is that correct? A. Yes, sir.

The Court: Go ahead.

By Mr. Bustin:

Q. Mr. Lopez, where did you go to school during the 68-69 school year? A. It was in the vicinity Salem, Philadelphia, Comer Heights, Pennsylvania, just outside of Philadelphia.

Mr. Bustin: Did you attend any school here in Columbus during that year. A. Well, I went there one full year. I can't remember.

Q. Do you know, Mr. Lopez, at the time you were suspended, how many credits you had earned in school? Say this was your senior year. Do you know how many credits you had earned at that time? **(page 16)** A. No, I don't.

Mr. Bustin: That's all the questions I have.

The Court: Do you have any further questions, Mr. Roos?

Mr. Roos: Just one further question, Your Honor.

The Court All right.

REDIRECT EXAMINATION

By Mr. Roos:

Q. Mr. Lopez, to your knowledge were there many people attending Columbus school, or in your personal knowledge, who were 19 years of age? A. Yes, there was.

Mr. Roos: Thank you. No further questions, Your Honor.

The Court: Dwight, when you received a notice of suspension, did it say how long you were suspended? A. No, it didn't say.

The Court: Did anyone ever tell you either verbally or in writing why you were suspended? A. No, sir. **(page 17)**

The Court: Are you sure? A. Yes, sir, I am sure.

The Court: You stated a few moment ago that on the 26th of February, 1971, there was a student disruption at Central High School; is that correct? A. Yes, sir.

The Court: What was the nature of that disruption? What happened there, Dwight? A. It started during Black History Week. The students wanted to put on their own black history show and they requested the use of the auditorium, and the request was granted; but, when they found out who the speakers were, or would be, they refused. That led to tension. A few weeks later —

The Court: Let's come up then to the 26th of February. You were in school that day; weren't you? A. Yes, sir.

The Court: You said there was a student disruption. What was the nature of the student disruption? Who did what? A. Two students were shot that night, two black students.

The Court: Were shot? A. Yes, by white students from another school. **(page 18)**

The Court: During the day? A. No, it was —

The Court: I am talking about, Dwight, during the school day of February the 26th. You stated on your direct examination that there was a student disruption at the school that day. I am trying to find out from you if you know, and I assume that you know because you said there was a student disruption there, what was the nature of that disruption? Who did what? A. The students overthrew tables.

The Court: Where were the tables? A. In the lunch room, and broke a few windows, and that's all that I could see that was done.

The Court: Did you take part in that disruption? A. No, sir, I was in class. I had what they called free study in the lunch room at the time. The students came in the lunch room and started overthrowing the tables, and I and a few more friends of mine, we walked out. We just walked out.

The Court You are saying now, and you are under oath, that you took no part **(page 19)** in that student disruption on February 26th? A. That's right, sir. I didn't have anything to do with it at all.

The Court: Did you ever receive a letter from the school authorities telling you why you were suspended? A. No, sir, I never got a letter saying why I was suspended; just that I was suspended, and that was it.

The Court: Did anyone tell you on February 26th to leave the premises of the school? How did you know you were suspended? A. The school was let out early that day.

The Court: Did you leave with all the other students? A. Yes, sir.

The Court: You weren't asked to leave before or anything like that; you were not singled out by any of the school administrators and told to leave; were you? A. No, sir.

The Court: You left with the rest of the students? A. Yes, sir.

The Court: You didn't go back to school the next day; did you? **(page 20)** A. No, sir.

The Court: Why not? A. The next day, well that happened on a Friday, the next day was Saturday, sir.

The Court: You didn't go back the next Monday; did you? A. No, sir.

The Court: Why didn't you go back? A. The Friday that I was suspended, I received a call.

The Court: Wait. Were you suspended — You left with all the other students on Friday; didn't you? A. Yes, sir.

The Court: Because the whole student body was let out about 10:30 in the morning? A. Yes, sir.

The Court: After you left the premises of the school, how did you find out that you were not to return to school the following Monday A. The principal called my house that Friday that I was suspended.

The Court: That Friday? A. Yes, and stated that I was suspended.

The Court: Did he tell **(page 21)** your mother or did he tell you? A. He told my mother I was suspended?

Q. You weren't there? A. I was there standing next — I answered the phone and he asked to speak to my mother.

The Court: He told your mother that you were suspended from school and you were not to return to school on the following Monday; is that correct? A. Yes, sir.

The Court: Did he give your mother any reason why you were suspended? A. No, sir.

The Court: Later on you received a letter either on the 5th or the 6th of March telling you to come to the Education Building on the 8th of March; is that correct? A. Yes, sir.

The Court: You didn't get into this meeting that you were suposed to have on the 8th of March; did you? A. No, sir.

The Court: Did you ever go back with your mother or anyone else on the 9th or the 10th or the 11th or 12th of March? Did you ever make an attempt to go back there? **(page 22)** A. We called for another appointment but they wouldn't speak to us, sir.

The Court: You found out nothing until the 25th of March; is that right? A. Yes, sir.

The Court: And on the 25th of March you got a letter saying that you were transferred to another school; is that correct? A. Yes, sir.

The Court: Does anyone have any further questions of this witness?

Mr. Bustin: May I ask another question, Your Honor?

The Court: Yes.

RECROSS-EXAMINATION

By Mr. Bustin:

Q. Mr. Lopez, have you ever seen a letter of February 26, 1971, directed to your parents? A. Yes, sir.

Q. Does that letter not say that there had been a disruption at school in which a group of students was involved, and does it not say that Dwight was in the group? A. I can't remember. I wasn't in the group.

Q. I will hand you what has been marked as Plaintiff **(page 23)** Exhibit 1 A. Have you ever seen that letter? A. I don't remember seeing it. My mother received it. It was written to her.

Q. Are you saying that your mother never went over that letter with you, or that you could have seen it and don't remember? A. I can't remember. I may have seen it. I don't know. I can't remember.

The Court: You may step down from the witness stand. Your testimony is finished now.

Do you want to ask another question?

Mr. Bustin: No, Your Honor.

The Court: Call your next witness, Mr. Murphy.

Mr. Roos: We would like to call Betty Crome to the witness stand.

BETTY CROME.

called as a witness on behalf of the plaintiffs, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Roos:

Q. Please state your name for the record. A. Betty Crome. **(page 24)**

Q. Miss Crome, on March 3, 1971, were you in the 7th grade at McGuffey Junior High School in the Columbus School System? A. Yes, I was.

Q. Were you suspended from McGuffey on March 3, 1971? A. Yes, I was.

Q. Could you describe, to the best of your ability, what occurred on that date which led up to your suspension? A. On that day I went to school and I went to my first period class. As I got out, there was students in the hall, and I couldn't get to my second period class. They were having disturbances in the hall, which I couldn't get to my class, so I decided I would go home because there were other disturbances, or there had been, and I guess I was scared at what might happen, so I would go home.

So, I went outside and students began to come out of the door too, so, which I heard my friend call me and we started talking on the playground, and then the principal came out and he told us to go home. He told all of us to go home which were on the playground.

Q. Then you left the school at the request of the principal; is that correct? A. Yes, I did.

Q. Then could you describe what occurred between the time you left school and the time you attempted to get home? **(page 25)** A. Well, let's see. I was on my way home, which other students were going the same way that I was. They were going over to Linden McKinley, I guess, they said they were going over there to see if they could get some help, so they was gonna go see what they could do to McGuffey, I guess.

Q. Were you with those students? A. I was alone then and they were behind me, so when they got over to Linden, I was still on the premises of Linden McKinley, so I guess the principal had called the police, and the police came and started to pick us students up, and I got picked up too.

Q. Were you taken to the Police Department? A. Yes, I was.

Q. What occurred at the Police Department? A. They asked me a few questions and then they called my mother and told her to come and pick me up.

Q. Did the police at that time venture the opinion that you were suspended; that you would be suspended? A. Yes, they did.

Q. From there did you go home? A. Yes, I did.

Q. Let me get this clear. When you were — Were you among the demonstrators at Linden McKinley? A. Were I among them?

Q. Yes. Were you demonstrating? **(page 26)** A. No, I wasn't.

Q. Were you yourself trying to seek any sort of assistance? A. No, I wasn't.

Q. You were in the area? A. Yes.

Q. When did you then find out that you had been suspended? A. When I was down town, they told me that

I probably would be suspended, so when we got home, my mother called the school to see if I was, and they said, the secretary said I probably was suspended.

Q. At that time were you given any reasons for the suspension? A. No, I wasn't.

Q. Did you at any time prior to the suspension, or prior to the next school day, have an opportunity to tell your side of the story? A. No, I didn't.

Q. Were you given any sort of a hearing? A. No, I wasn't.

Q. Did you subsequently receive a letter or other correspondence concerning your suspension? A. Yes, I was.

Q. That letter was dated March 3rd, 1971? A. Yes, it was.

Q. That's Exhibit 2 A, Your Honor. **(page 27)**

Q. Did you receive any other letter or correspondence other than that one? A. No, I didn't.

Q. Well, during any time that you were out of school, or at any time thereafter, were you ever given an opportunity to tell your side of the story? A. No, no, I didn't.

Q. Were you ever given an opportunity for a hearing? A. No, I wasn't.

Q. On March 3, had you done any other activity which you possibly could have been suspended for, to your knowledge? A. No, I didn't.

Mr. Roos: Nothing further of this witness, Your Honor.

The Court: You may cross-examine, Mr. Bustin.

CROSS-EXAMINATION

By Mr. Bustin:

Q. Miss Crome, what grade were you in at the time the suspension took place? A. Seventh grade.

Q. What grade did you go into last year? A. Ninth grade.

Q. You are in the ninth grade right now? **(page 28)** A. No, tenth.

Q. I would like to go over this again. This suspension occurred on or about March 3, 1971? A. Yes, it did.

Q. What was taking place at McGuffey? A. What was taking place?

Q. Yes. What was going on there at the school at that time? A. You mean what were they doing?

Q. Right. A. They were breaking the light bulbs and throwing glasses out the cafeteria, and that's all I can remember.

Q. I believe your testimony was you left the school. A. Yes, I did.

Q. When did you leave? What time of day? A. I can't remember.

The Court: Was it in the morning or in the afternoon? A. In the morning.

The Court: About how long, what time did you get to school that morning? A. 8:45.

The Court: How long were you there before you left, about; were you there an hour? A. Forty-five minutes. **(page 29)**

Q. Did you leave on your own volition? A. Yes, I did.

Q. Where did you go? A. After I left the school, I reached the playground.

The Court: Is that the playground connected with the school? A. Yes, it is.

Q. What happened there? A. The principal came out and told everyone to go home.

Q. Told you to go home? A. Yes.

Q. Did he at that time say to you, you are suspended? A. No, he didn't.

Q. Were other students going home at that time too? A. No, they were going to Linden McKinley.

Q. Did you go to Linden McKinley? A. I have to go that way to get home.

Q. Did you stop there? A. No—Yes, I did.

Q. What was happening at Linden McKinley? A. They were on the sidewalks, people were looking out McKinley's windows and the students were looking up and hollering at the students that were looking out the windows.

Q. I believe your testimony is that you were picked up by the police there at Linden McKinley? **(page 30)** A. Yes, I was.

Q. You were taken down town? A. Yes, I was.

Q. Where did you go, to the Juvenile Bureau? A. Yes, I did.

Q. Did somebody in the Juvenile Bureau interview you at that time? A. Yes.

Q. Then did the police call your parents? A. Yes, they did.

Q. Did your parents come down to the Police Department and get you? A. My mother did.

Q. Did the police discuss this whole situation with your mother at the time? A. Yes, he did.

Q. Then what did they do, send you home with your mother? A. Yes.

Q. Mss Crome, have you seen the letter which your counsel referred to as Exhibit 2 A, a letter that was sent to your parents? A. Yes, I saw it.

Q. What day did you go back to McGuffey? A. I can't remember.

Q. Would it have been around March 8th? **(page 31)** A. Yes, I think.

Q. How long were you out of school? A. A week.

Q. Did your parents, when you went back to McGuffey, go with you or your parent? A. No, she didn't.

Q. Doesn't a letter marked Exhibit 2 A talk about the parent accompanying you back to school on March 8, 1971? You say your parent did not? A. No, she didn't.

Q. Did your parents ever come down and talk to the principal? A. No, she didn't, but she talked to him on the telephone, the secretary.

Q. Did she ever talk to the principal on or about March 8, 1971? A. No, she didn't.

Q. You say you were in the seventh grade at the time? A. Yes, I was.

Q. You are presently in the tenth grade? A. Yes, I am.

Mr. Bustin: No further questions.

(page 32)

REDIRECT EXAMINATION

By Mr. Roos:

Q. Betty, did you leave the school grounds at any time before the principal told everyone to go home? A. No, I didn't.

Q. So, you left the school building to go out into the playground? A. Yes, I did.

Q. Why did you do that? A. Because I thought I would go home.

Q. But you were in the playground when the principal came out and told you to leave? A. Yes, I was.

Q. He told everyone to leave? A. Yes, he did.

Q. To your knowledge, was there any opportunity for any sort of hearing between the 3rd when you were suspended and the 8th when you returned back to school? A. No, there wasn't.

Q. During that time were you given any opportunity to make up the work that you had missed? A. I don't understand.

Q. Did you have an opportunity to make up that time? A. No, I didn't.

The Court: Betty, you **(page 33)** did pass through the seventh grade; didn't you? A. Yes, I did.

The Court: You passed all your subjects in the seventh grade? A. Except for geography.

The Court: Did you make that up? A. No, I didn't.

By Mr. Roos:

Q. No charges were brought against you by the police when you were down at the Police Department? A. No, they weren't.

Mr. Roos: No further questions of this witness, Your Honor.

The Court: How did you know when to go back to school? A. On the letter it said what day I was supposed to bring my parent in, and she called in that day and said that she couldn't make it, and they told her that it would be all right; she could send me back.

The Court: So, your mother, you didn't talk to the school people over the telephone; did you? A. No, I didn't.

The Court: They talked **(page 34)** to your mother and your mother told you to go back to school on the 8th and it would be all right; is that it? A. Yes.

The Court: You may leave the witness stand.

Call your next witness, Mr. Murphy.

SUSAN COOPER.

called as a witness on behalf of the plaintiffs, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Roos:

Q. Please state your name for the record. A. Susan Cooper.

Q. On Monday, March 15th, 1971, were you attending Marion Franklin High School in the Columbus School System? A. Yes, I was.

Q. On Monday, March 15, 1971, were you suspended from Marion Franklin? A. Yes, I was.

Q. How did you find out that you were suspended from school? A. Well, the principal told me I was suspended, and I was escorted out of the school by plainclothesmen.

Q. Did the principal at that time tell you why you were **(page 35)** suspended? A. No. Can I explain what happened?

The Court: Yes. You go ahead and explain what happened because this Court is in complete darkness as to why you were escorted out, and I think you ought to bring that out in your questioning, Mr. Roos. A. It was on Monday when I was suspended. The previous Thursday the school was closed down. There had been some trouble in the school and the school was closed down.

We was asked to report back to school Monday, the whole student body. When I got back, there was supposed to be assembly in the auditorium with the parents and the students, we were told that we could meet in there Monday, because we was having assembly Thursday when they closed it.

So, when we come back, we wasn't allowed to have the assembly, so they were asking all the students to go back to class and everything, and there was a lot of parents there, and it was causing a lot of confusion because they said we could have this assembly.

Tension was rising and all kinds of things like that, and I had wanted to go home. My mother had told me if anything went wrong, for me to come home. So, in the mean time I was trying to get excused to go home, and Mr. Collmar, which was the vice principal at the time, I think he told a whole lot of people to go to class. There was a whole lot of people in the attendance office getting **(page 36)** excused, and I was trying to get excused and trying to explain to him that I wanted to get excused; I

didn't want to leave the building without getting excused. I wanted to get a written legal excuse, and I told him he could call my mother so I would be excused legally and not be illegally suspended, and he just told me, he said, "Well, you are suspended anyway," you know.

The Court: Susan, what happened on the previous Thursday there at your school? A. I think it was all evolved around the Black History Week, and I think—I can't quite remember. There was a disturbance in the assembly about the way the program was being run, or something, and somehow the black students ended up in the gym and the white students were in the auditorium. We were separated.

The Court: Did the teachers and the principal separate you? A. No, I think the student body did it theirself.

The Court: The white students just voluntarily went to the auditorium and the black students just voluntarily went to the gym? A. Right, because there wasn't a fight or anything like that, and what happened, like one of the blacks went over to the white side and the whites came over then to the black side, and we talked about it. There really wasn't a problem between us **(page 37)** and so we all got together in the auditorium finally and some parents had come to the school because they knew there probably would be some trouble because Black History had caused trouble before, and we was having assembly and everything, and everything was going real good.

Mr. Fulton came in, which was the principal, and said the school was gonna be closed; we could continue the assembly Monday. That's the Monday I come back to school, and since there wasn't assembly—

The Court: You were out of school on Friday too, weren't you? A. Right. Everybody was, and so when everybody comes back to school, we was under the im-

pression we could have this assembly. It was more like a grievance-like, you know, we was gonna get everything off our chests, and we was just gonna talk about it, and we wasn't allowed to have it, and a lot of people got real upset, and could see that people was—I mean, just no telling what people was gonna do, and I didn't want to get involved.

The Court: Were there many parents with the children there on Monday morning? A. Yes, because they came up Thursday to see what was going on. It wasn't a whole lot of trouble, and everybody just wanted to talk about it, so the parents came back on Monday with the same impression; that we was gonna have this **(page 38)** assembly, but we wasn't allowed to have it, so what I did: My mother had told me to come home if everything didn't go right. I was trying to get excused to go home legally, and I was suspended just like that.

The Court: What year were you in then, Susan? A. That was '71, 11th.

The Court: That's the equivalent of being a junior? A. Right.

The Court: Go ahead, Mr. Roos.

Q. Could you explain who suspended you and what the details of the actual suspension were? A. Mr. Collmar suspended me in the hall. I was standing by the attendance office and he told me, he says, "Susie," he said, "You are gonna have to go home."

The Court: He call you Susie?" A. Yes, he did. He says, "Susie, you are gonna have to go to class."

I said, "Well, Mr. Collmar, my mother told me to come home if everything started, my mother said to come home." I said, "You can call my mother. She will tell you that I can come home. I just need a written excuse. I don't want to be **(page 39)** involved in this."

I said, "I just want to go home. I don't want to get suspended."

He said, "You are suspended any way," and two plainclothesmen escorted me out the door.

Q. Then what happened? A. Half way home I met my mother. She was coming up to the school because she felt something was gonna go wrong. Me and my mother came back up to the school.

The Court: Were you still with the plainclothesman when you met your mother? A. No.

The Court: They just escorted you off the school property? A. Yes. See, I live right down the street from the school, and I was walking home and I met my mother half way. I told her I had been suspended, so we went back up to there to talk to Mr. Collmar because he suspended, so we went back up to there to talk to Mr. Collmar because he suspended me. Mr. Fulton said he had us sit in the office because he said he would come back, and we waited. He didn't come back, so I approached the principal of the school, Mr. Fulton, and asked him about it since he was the head authority, I figured he was the one that ordered the **(page 40)** suspension.

He said he didn't know anything about it; for me to have another seat, so I went back out and set again. Mr. Gill, who is the last—like there is Mr. Fulton and Mr. Collmar, like Mr. Gill, he is at the bottom of all of it, and he is the one that told me I was suspended.

The Court: Who told you you were susupended? A. Mr. Gill.

The Court: You were there with your mother then? A. Right. Mr. Gill is the one that told me that I was suspended, but Mr. Collmar is the one that had suspended me in the very beginning, so I was trying to talk to Mr. Collmar. Mr. Collmar never showed back up to

talk to me. Mr. Gill delivered the message I was suspended, yet Mr. Collmar is the one that told me. Mr. Fulton didn't know anything about it, but Mr. Gill ordered it and told me I was to go home for ten days, and when I came back, I could have a conference.

The Court: Mr. Gill told you when you were there with your mother that you could go home for ten days? A. For ten days, and I could talk about it when I came back.

The Court: Then what **(page 41)** did you do, Susan? A. I went home.

Q. With your mother? A. Yes.

Q. At the time that you were in the principal's office, or the office at Marion Franklin trying to talk to these various people, were you ever given any opportunity to present your side of the story? A. No, I wasn't. I was merely trying to find out why, but in the process of trying to find this out, I had to go through three different people who didn't know anything about it, and the last one, Mr. Gill, "You are suspended. Go home for ten days. You can talk about it when you come back."

That's just how it was.

Q. Mr. Gill gave no reasons? A. No.

Q. Did you receive any correspondence from the school authorities during the ten days that you were out of school? A. We received a letter.

Q. That would be Exhibit 4 A, Your Honor. Did you receive any other letters? A. No, I didn't.

Q. Did you have any other opportunity, either during the ten days or afterwards, to protest your innocence? A. No, I didn't. **(page 42)**

Q. Did you have any opportunity to present witnesses or did you have a hearing of any sort? A. No.

Q. Did you miss work, school work, during the time that you were out of school? A. Yes, I did. I tried to get my materials; I wasn't allowed to do that. I finally had

a friend bring me some books and stuff. I gave her my locker combination and she brought me my books, but that wasn't good enough. I mean, I could read the books and everything, but I didn't know what materials I was supposed to be covering in the books because I wasn't, you know, in the classroom those ten days.

Q. Were you given any opportunity to make up the work that you missed? A. No. When you are suspended, you are not allowed to make up any work.

Mr. Roos: Nothing further of this witness, Your Honor.

The Court: You may cross-examine, Mr. Bustin.

CROSS EXAMINATION

By Mr. Bustin:

Q. Miss Cooper, have you graduated from school? A. Yes. **(page 43)**

Q. When did you graduate? A. June the 10th, 1972.

Q. At the time this suspension took place, you were in the 11th grade? A. Eleventh, yes.

Q. I take it you passed through the 11th grade and into the 12th grade? A. Right.

Q. You completed the 12th grade and graduated, you said, on June 10th? A. Yes.

Q. On the day that this suspension took place, did you not have a meeting with Mr. Fulton, the principal, in the hall? A. I never talked to Mr. Fulton that day at all, except when I went back to the hall office. My whole confrontation was Mr. Collmar.

Q. What was going on in the hall at the time Mr. Collmar came up to you or met with you? A. People coming out of the assembly; people trying to get in while other people was coming out, because we wasn't allowed to have it. It was really just a big mess of people

trying to see where they was going. The halls was just cluttered with people.

Q. What time of the day was this? A. It had to be around 10:30 or 11:00 o'clock, somewhere **(page 44)** in there. It was still in the morning.

Q. What was your assignment at that particular time of the morning? A. What do you mean?

Q. Where were you supposed to be in that period of school? A. I can't remember back that far. Normally on a normal school day, I would have been in my class, whatever that was.

Q. But you were not in class at that particular time? A. No, I wasn't.

Q. Were you requested to go to class? A. Yes, I was.

Q. Did you go? A. No, I didn't.

Q. Did Mr. Gill take you to his office on that day? A. Oh, no one took me to any offices. I came back up to the school and went to Mr. Fulton's office.

Q. What time of day was that? A. By then it must have been around 11:30 or noon, because I had met my mother coming back, going home, and we had come back up to the school, and we had sitted and waited to talk to Mr. Collmar.

Q. You met your mother? A. Yes.

Q. Mr. Gill, to the best of your knowledge, had not called your mother? **(page 45)** A. He couldn't have because my mother was on the way up there.

Q. Following this suspension, you returned to Marion-Franklin; is that right? A. Yes, I did, to find out why I had been suspended.

Q. Did you return with your parents? A. With my mother.

Q. Who did you meet with at that time? A. When I came back in the building, Mr. Kollmer was still out

in the hall with all these other people. I told Mr. Kollmer me and my mother wanted to speak to him. He had us just sit in the office, waiting for Mr. Kollmer. He didn't show back in there, so I went to Mr. Fulton because he is the head principal, he should know something about it. He doesn't know anything about it. That's what he told me, "Have a seat, wait on Mr. Kollmer again, so I am sitting out there waiting, Mr. Kollmer still hasn't showed up. From somewhere Mr. Gill comes out and he is the one that delivers the message, "You are suspended. You can have a conference in ten days when you come back."

I still never found out why, because the only reason I feel that they could have suspended me at all is that they felt I was being disobedient. I think that's what they put in the letter; I was being disobedient, I guess, to the fact that I didn't go to class, but I still don't feel I was being **(page 46)** disobedient because, you know, like I was really caught up in a psychological thing, this is how I feel, because.—

The Court: What do you mean you were caught up in a psychological thing? A. Because—okay, now—the principal saying no class. Okay. Like you can't leave the school grounds without permission, or you are automatically suspended.

I was trying the best and only way I know how to do this right and get this excuse so I can leave and return to school without a suspension.

Then, on the other hand, it seems—maybe I am wrong, this is how I feel this is what motivated me at the time—now it seems like the system we are under is, you know, motivated under Christianity—

The Court: I am not interested in that. Susan, before Mr. Collmar told you you were suspended, did he tell

you to go to the classroom where you were supposed to be? A. Yes, sir.

The Court: What did you say to him? A. I told him that my mother had told me to come home. This is what I am talking about. My mother told me if anything went wrong, to come home.

The Court: What was **(page 47)** going wrong that you thought you should go home? A. Because he was telling everybody to go to class—

The Court: If you had gone to class, would you have been in any danger? A. I am not sure because there was tension up there because—I don't know what day it was.—

The Court: You did refuse Collmar when he told you to go to your classroom; didn't you? A. I didn't actually refuse. I asked Mr. Collmar would he please call my mother so I could get out of there before something went wrong.

Q. Miss Cooper, following your return to Marion Franklin, were you elected as the homecoming queen? A. Yes, I was.

Q. What year was that? A. '72.

Q. In other words, that's the year following this suspension? A. Yes.

Q. Miss Cooper, when you returned to school following the suspension itself, did you return with a parent? A. Yes, my mother.

Q. Did you talk to the principal or one of the assistant **(page 48)** principals at that time? A. I believe I talked to Mr. Fulton. I can't quite remember who I talked to.

Q. Was your mother present? A. Yes.

Q. Was the subject of the suspension discussed at that time? A. Yes. The only thing that they ever told me I was suspended for, I think is because I was belligerent to whatever happened. I still don't know what happened.

Q. Was the subject of the suspension discussed during that conference? A. Not in any detail; just that I was suspended.

Q. I am talking about the conference when you came back. A. Back to school?

Q. After the suspension. A. No.

Q. Did you make any attempt to go to your class on the day you were suspended?

The Court: The record is perfectly clear on that, Mr. Bustin. She didn't.

Mr. Bustin: I have no further questions, Your Honor.
The Court: Do you have any questions on redirect examination? **(page 49)**

REDIRECT EXAMINATION

By Mr. Roos:

Q. Susan, to the best of your knowledge, did you receive zeros in all work that you missed during the time that you were out of school? A. Yes, I did.

Mr. Roos: Nothing further, Your Honor.

The Court: Susan, you did pass all your subjects; didn't you, in your third year? A. I passed them because I was intelligent enough to do so.

The Court: I am not asking you that. I said did you or did you not pass all your subjects. A. Yes, I passed.

The Court: Leave the witness stand and take your seat out in the courtroom.

Call your next witness.

DEBRA FOX,

called as a witness on behalf of the plaintiffs, having been first duly sworn as follows: **(page 50)**

DIRECT EXAMINATION

By Mr. Roos:

Q. Please state your name. A. Miss Debra Fox.

Q. Were you attending Marion Franklin High School in the Columbus School System on Wednesday, March 10, 1971? A. Yes, I was.

Q. Were you suspended from Marion Franklin on Wednesday, March 10, 1971? A. Yes, I was.

Q. Who suspended you? A. Mr. Collmar.

Q. At the time that you were suspended by Mr. Collmar, did he give you any reasons for the suspension? A. No, he didn't.

The Court: Debra, tell us in your own words, as best you recollect, on March the 10th, 1971, Mr. Collmar suspended you? A. Yes.

The Court: Where were you when he suspended you in the school? A. When he suspended me, I was in his office, but when he told me I was to be suspended, I was in the lunchroom.

The Court: What time of the day was it? **(page 51)** A. Lunch time, 12:00 o'clock.

By Court:

Q. What was taking place there in the lunchroom? A. I was eating my lunch.

Q. Well, was there any disruption or anything? Did Mr. Collmar walk right up out of the blue and say, you are going to be suspended; come to my office? A. No, he said, "Debra, I would like to see you in my office."

I said, "What for?"

He said, "If you don't come to my office, go home for ten days."

Q. He said, if you don't come to my office— A. Go home for ten days.

Q. Did you go to his office? A. Yes, sir, after I called my mother.

Q. When you went to his office, what did he say? A. He told me I was suspended for ten days.

Q. Did he give you reason why you were suspended? A. No, not really.

Q. What did he say to you? A. He said that I was suspended for ten days, to go home with my mother and I would receive a letter.

Q. At that time did he tell you why you should go home and you were suspended for ten days? **(page 51)** A. Well, he talked to my mother.

Q. Did he, before your mother got there, tell you? A. No, he didn't.

Q. He didn't give you any reason whatsoever? A. No, he didn't.

Q. Did you have any idea of why you were being suspended? A. No, I didn't.

Q. This came as a complete surprise? A. Yes. There was disruptions that morning in the school, but it came as a complete surprise to me that he suspended me.

Q. Did you take part in the disruptions? A. No.

Q. You were in the classroom all the time? A. No, there were no classrooms.

Q. Weren't classes being conducted? A. No, I was in my club. We was having club meetings that morning when they came and told me to come out. They told me to come to the attendance room, and they asked me what were the students planning on doing today.

The Court: Go ahead, Mr. Roos.

By Mr. Roos:

Q. Had you done anything that morning, to your knowledge, that violated any rule or regulation of the school? A. No, I didn't. **(page 52)**

Q. Had you been involved in the demonstrations? A. I was out in the halls with the other students but I wasn't doing anything.

Q. Were there a lot of other students out there? A. Yes, the whole school.

Q. Considering the fact that there were a lot of students out there, could Mr. Collmar or someone else have made a mistake as to your identity with respect to your involvement in any demonstrations?

Mr. Bustin: I object. That calls for speculation.

The Court: I will sustain that objection.

Q. Were there a lot of other students out there? A. Yes, there was.

Q. At the time that he called you into his office, Mr. Collmar, did he give you any opportunity to tell your side of the story? A. No.

The Court: What would prompt such a question from you, Mr. Roos, when this witness has told this Court in the plainest possible terms that she was given no reason for the suspension.

Q. Well, I guess what I was trying to get at, Your Honor, was maybe I should have phrased the question: Were you **(page 53)** given any opportunity to protest your innocence of any wrong doing? A. No, I wasn't.

Q. At the time that Mr. Collmar suspended you, did he appear to be emotionally upset? A. Yes, he was.

Q. Did you then leave Mr. Collmar's office and go home? A. Yes, I did.

Q. At the time that you had the meeting with Mr. Collmar, did he tell you how long the suspension would last? A. Well, he stated that when he was in the lunchroom, ten days.

Q. You received, subsequent to the suspension, a letter dated March 10, 1971; did you not? A. Yes, I did.

Q. You received one dated March 19, 1971? A. Yes, I did.

Q. And one dated March 23, 1971? A. Yes, did.

Q. Those are Exhibits 3 A, 3 B and 3 C, Your Honor. Did you receive any other correspondence from the school? A. No, I didn't.

Q. Between the 10th of March and the 19th of March, were you given any opportunity to met with school officials to **(page 54)** protest your innocence? A. No, I didn't.

Q. Did you return to school on the 19th? A. Yes, I did, with my father.

Q. What occurred at that time? A. We went to Mr. Collmar's office and he told my father to take me back home; that I was suspended for ten more days.

Q. Did he at that time indicate that he had some other plans for you? A. Yes, he did.

Q. On the 19th did you do any act, to your knowledge, that would have prompted a further suspension? A. No, I didn't.

Q. You were there with your father? A. Yes, I was.

Q. Were you given any new reasons for your suspension? A. No, just that he did mention something about being transferred to another school. I think he did.

Q. At the meeting on the 19th were you given any opportunity to protest your innocence to the original act that you had supposedly done? A. No.

Q. Were you transferred ultimately to South High School? Yes, I was.

Q. When were you finally admitted to South? **(page 55)** A. The last couple of days in March.

Q. Had you requested the transfer to South? A. No, I didn't.

Q. Were you given any notice of reasons other than the letters that you received that are already in evidence, any other notice of reason for the transfer to South? A. No.

Q. Did you have any difficulties as a result of your suspension and transfer? A. Yes, I did.

Q. Could you explain? A. I had hard time making up my grades and the work that I missed.

By The Court:

Q. What year were you then in, Debra? A. Tenth.

Q. That would be the second year of high school? A. Yes.

Q. What grade are you in now? A. I graduated.

Q. From South High School? A. No, from Central Night School.

Q. How old were on March 10, 1971? How old are you now? A. Eighteen; I was 16. **(page 56)**

Q. How long did you go to South after you were transferred there? A. The rest of the year.

Q. Then beginning in September of 1971, did you go to Central Night School? A. No, I went to East High School.

Q. East High School? A. I had moved from the district so I attended another school.

Q. When you were at East High School, starting in September of 1971, were you in what is known as the junior year or the 11th grade? A. I was in my junior year. I had completed most of my junior year.

Q. Let's get this straight. You were in your sophomore year or the 10th grade when you were suspended in March 1971; is that correct. A. That's right.

Q. Later that month, toward the end of the month, you were transferred down to South High School? A. That's correct.

Q. You completed your tenth grade or your sophomore year at South High School; is that correct? A. That's right.

Q. Then the following September, which would be September **(page 57)** of '71, you were enrolled at East High School? A. Right.

Q. Were you enrolled as an 11th grader or the junior year at that time? A. I was enrolled as a junior. I had started when I was in the eighth grade, I was in a program they considered as an honor student; students, you know, make A's and B's, and we started taking our ninth grade subjects in the eighth grade.

Q. Then did you make high school in three years? A. Yes. I finished in two and a half years.

Q. Then did this suspension and the transfer effect — A. Yes, it did. When I was over at Marion Franklin, I was taking French III and I was making —

Q. Do you go to school now? A. No, I don't. I graduated.

Q. Do you work? A. No, I don't. I have a little girl.

Q. You are married. A. No.

Q. You made high school in two and a half years? A. Yes, I did.

Q. Even with this suspension? A. Yes, I did, but I still had some problems because I was making straight A's but when I was transferred to South, my grades went down. **(page 58)**

Q. Where did they go to? A. They went down to, in French I started making F's and D's.

Q. What happened to you when you went to East High School? How did you do out there? A. At East? Oh, bad.

The Court: Go ahead, Mr. Roos.

Q. During the time, were you given an opportunity to make up the work that you had missed during the 20 days that you were out of school? A. No, I wasn't.

Q. To your knowledge, did you get zeros on the work that you missed? A. Yes, I did.

Q. Was part of the decline in your ability or—strike that. You had difficulty adjusting to the new teachers and new ways of doing things? A. Yes, I did.

Mr. Bustin: Objection, Your Honor.

The Court: I will sustain that objection. Let's go. This young lady made high school in two and a half years. This Court is not going to be impressed by any loss of ten or 20 days suspension. **(page 59)**

Mr. Roos: Your Honor, I have no further questions of this witness.

Mr. Bustin: Defendants do not desire any cross-examination of this witness, Your Honor.

The Court: Call your next witness, Mr. Roos.

Mr. Roos: I would call Dr. Robert Woody, Your Honor.

DR. ROBERT WOODY,

called as a witness on behalf of the plaintiffs, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Roos:

Q. Dr. Woody, what do you presently—What's your present location of employment? A. I am presently Professor of Education and Psychology at Ohio University and serve as consulting psychologist to the Eastland Psychological Center in Columbus; the Psychobehavioral Institute in Grand Rapids, Michigan, and am designated to become head of the Center for Education Law at Ohio University.

Q. In your work as a school psychologist and a child psychologist, have you had the opportunity to observe children who have been suspended from school? **(page 60)** A. Yes.

Q. Could you estimate roughly the number of children that you have seen during this time as a psychologist? A. I know for a fact that I have personally done psychological evaluations on approximately 3,000 school age children and have seen, I cannot estimate how many more, but it's literally in the hundreds and perhaps even in the thousands beyond that, in the last 13 years.

Q. Not all of those children were suspended? A. Not all of those were suspended.

By The Court:

Q. What part of them, doctor? A. I would be very hard to estimate, sir.

Q. Would it be ten percent or 20 percent? A. No, a much smaller percentage.

Q. Five percent? A. Smaller.

Q. Well then, in round numbers, that you have seen 100 children who were suspended? A. I have seen in one project alone to be identified as the Living Arts Project in Grand Rapids, Mchigan, set up specifically for children, youth who have been suspended or who have had run-ins with the law, but perhaps not found guilty of crime, but felt an alternative education program was needed, over a two and a half-year period, I personally dealt **(page 61)** with approximately 300. In public school systems, I have dealt approximately with 50 who were your 8, 10, 12 year olds who have been suspended for violation of school regulations.

The Court: Thank you.

By Mr. Roos:

Q. In your practice that you previously described and which is outlined in your vita, have you observed psychological harms befalling students who were suspended? A. Most definitely.

Q. Could you describe some of the behaviors that you have observed.

Mr. Bustin: Objection. . .

The Court: I am going to let this go in for whatever value we place upon it. I would like to state I want you to get on with your examination, Mr. Roos. . . A. Would you restate your question, please, sir.

Q. You have previously said you have observed psychological harms befalling students who have been suspended? A. Correct.

Q. Could you describe some of the behavior that you have observed that appeared to spring from the suspension? A. I think to preface these comments we would have to say that the majority of the "Harms" fall within the rubric of social deviancy labeling. In other words, the person is **(page 62)** placed into a category other than the "normal."

Now, specifically what I have run into—Well, I will come back to that—I have found a number of cases where the person may have had a flawless record academically on or behaviorally prior to the suspension, and I can think of specific instances, specific young persons, who once they have been labeled as a social deviant by fact of expulsion or suspension, including short-term suspension, they have returned after a period of a few days even and have taken on a new role in rebellion.

Secondly, another psychological reaction that I have noted in a number of cases is that there are a number of young people who have no way of finding rewards from contracts with other youngsters, and the minute they become labled as exceptional or deviant in this case, they start using negative behavior as a way of receiving what is called social recognition from their peer group, and so instead of the suspension serving a constructive purpose to re-enforce better behavior when they return to school, I have seen a number of instances where exactly the opposite has happened. It has re-enforced continued acting out of negative behavior.

Perhaps finally, I might add to this, circumstantial, I am sure, the last witness that was on here. I am sure the last witness that was on the stand, I would wonder about the relation to the fall in grades, but that is strictly **(page 63)** speculation as to whether this could be caused by the rest.

Finally, the labeling process or the social deviancy labeling does carry over from one teacher to another, whether it is from a cumulative record, that is on file, or from word of mouth over coffee cups in the teacher's lounge and stereotypic responses to that student, do in fact occur in later years, and I have witnessed that.

Q. What is the effect of stereotyping with respect to the student's performance? A. Again, I can think of specific cases, and just in summary, it would be that the teacher expects a certain kind of behavior, namely rebellious behavior or negative behavior, from a youngster and with that kind of expectation as a pre-set the youngster naturally is re-enforced into producing that kind of behavior.

Q. Are there studies that support that? A. I think we could come up with a number of studies that support that, yes, of pre-sets.

Q. To clarify what you said with respect to the social deviancy labeling, are you saying that when a child is suspended, he gets recognition, that this recognition may tend to make him do bad things in the future to get more and more recognition; is that, in a layman's definition, correct? A. In a layman's terms, that's it, and behavioral science terminology there are literally thousands of studies at this **(page 64)** point on the effects of social deviancy labeling. In other words, the moment a person is identified as differing from the majority of the others, that person uses that labeling as a motivator for subsequent behavior. In the case of suspension, it would be along the three points I outlined previously in terms of probably the effects.

I might add that I think the social deviancy in terms of effect probably runs on a continuum, and of course the more powerful the label, such as ex-convict versus

suspended for three days, the more powerful the effect potential effect, and thus the more powerful the need for some kind of rehabilitative effort to counteract that kind of deviancy label.

The Court: Doctor, may I conclude from what you said so far that every student, we will say in a high school, who is suspended from class from a period of, let's say, three days to ten days or such period, therefore automatically becomes a social deviant? A. You may conclude that he does in fact for that period become a social deviant, but we cannot conclude that he will automatically or that everyone will automatically regress to more negative behavior in the future because people—

Q. He is a social deviant in the eyes of his fellow students; is that correct? A. That's correct.

Q. Is that during the period of suspension only, or does **(page 65)** that carry over? A. That depends upon the personality structure of the individual. It depends upon his previous relationships with his peers, and it depends upon the kinds of supports or lack of supports that come from his home environment and surrounding cultural milieu.

Q. Doctor, may I also conclude from what you have testified to so far that in all cases of suspension some harm comes to the individual? A. I would go so far as to say in all cases of suspension, the potential for harm is there, psychological harm.

Q. Doctor, we know that there is a potential for everything, but may I conclude from what you have said that in all cases of suspension, let's say suspension of at least three days up to, say, two weeks, that there is harm to the student of one kind or another, whether you call it social deviancy or he falls behind in his stud-

ies or something like that; is there harm to the student? A. I would say yes.

Q. That being the case, doctor, since harm of some kind comes to every student, who is subjected to a suspension, does that mean that the school systems should not suspend students; that there should be some other means of keeping them under control? A. I would be willing to go on record that, yes, suspension **(page 66)** is a negative alternative; that there should be positive alternatives to do away with suspension.

Q. Can you recommend any positive alternatives, doctor? A. Yes, and we could go on for days with that.

Q. All right. Let's talk just about the alternative of special attention from a school—I guess they are called Pupil Personnel workers within the City School System —where the person receives attention from school social workers. I guess they are called visiting teachers in Ohio, a school psychologist where there is some kind of therapeutic intervention dealing with what the alleged problem was, such as being belligerent.

Instead of suspending them from school, where they are released into an unstructured environment, and I have witnessed cases where the suspension—

Q. They are released to their homes, and presumably that's not an unstructured environment; is it? A. Unfortunately many youth—

Q. The fact is that it is an unstructured environment? A. That, sir, is correct.

Q. Doctor, would your answer be the same as to the alternative means to suspend regardless of the behavior of the individual and the aggravation of his offense? A. No. If there is some kind of assault on the other **(page 67)** person, some kind of physical danger to the other person, obviously the school has to do something.

Q. By the other person, you mean? A. A second party.

Q. You mean the teachers or the administrators? A. Or another student. There has to be the safeguarding of the other persons, and so there is a point where, yes, suspension has to occur, but your original question, Your Honor, I believe was: Is suspension going to cause harm to potentially to everyone, and I would say yes to that.

Q. I didn't say potentially. I said will it cause harm. A. Yes, even the one who assaulted another one, suspension is going to be a negative factor.

The Court: Go ahead, Mr. Roos.

By Mr. Roos:

Q. With respect to a person who perceives themself as innocent, would the same harms be increased or decreased, or would there be additional harms that may be likely or possible to happen? A. I think that psychological theory would unequivocally support that the innocent persons who is suspended unjustly that the probability would be greater that the harm would occur.

Q. In addition to your psychological experience, have you ever been involved in a college selection process? **(page 68)** A. Yes. I served as—excuse me.

The Court: Just a minute, please. Is this going to lead to, or will the next question be this: Is suspension harmful to being selected in college?

Mr. Roos: That's correct.

The Court: I am not going to listen to that, Mr. Roos, not based on this record, so just skip over that and go on to your next question.

Mr. Roos: Your, Honor, if I might address the Court on that.

The Court: No, you may not. Continue with your examination.

Mr. Roos: I have no further questions of this witness.

CROSS-EXAMINATION

By Mr. Bustin:

Q. Mr. Woody, have you had occasion to conduct a psychological evaluation of the students involved in this litigation? A. No, I have not.

Q. Have you studied their school records or any of the information possessed by the administrative officials? A. No, I have not, but would be willing to do so. **(page 69)**

Q. Did you visit any of the schools where these suspensions took place? A. No, I have not. I am familiar, being a resident of this area and having worked in and out of Columbus since 1967, with the overall educational atmosphere only of the school system here.

Q. Mr. Woody, in talking about the effects of suspension, isn't it just as probable that the effects you talk about could be caused by the behavioral characteristics of the student as the suspension itself? A. Would you paraphrase that a bit further, please?

Q. I believe you talked in a very general way about harms that come to— A. The act of suspension itself?

Q. Right. I believe somewhere in your testimony you also said you would have to know something about the overall behavioral characteristics of the particular students involved; right? A. Right.

A. What I am asking you as a layman—

The Court: No, you don't ask questions. Counsel ask questions. If you don't understand the question that was just put to you, although I understand the question, put the question to the witness again. **(page 70)**

By Mr. Bustin:

Q. What I am trying to get at you as an expert is: Wouldn't the behavioral characteristics of the particular student involved have as much potential in talking about the harm, the harm you are looking for, as the suspen-

sion itself? A. I don't believe so, and if I could insert a very brief anecdote. I remember very clearly a young approximately ninth-tenth grade boy I worked with about a decade ago who was from a white middle class upper mobility family had an ideal scholastic background in school and school participation background, no aversive acting out, suspended, returned with a completely different rebellious set, and this continued on for some time.

Whether that was some kind of latent behavioral characteristic, I don't know, but if we are dealing with superficial behavioral characteristics, I would have to answer your question in the negative.

Q. Do you know any of the behavoral characteristics of the students involved here? A. No, nothing more than I have heard this morning.

Mr. Bustin: I think that's all the questions I have, Your Honor.

Proffer of aforementioned witness by Mr. Roos: Testimony from Robert Woody concerning the effect of suspension on college **(page 71)** admissions and the possible negative effects on college admissions.

This is a class action which affects many students beyond the particular — named plaintiffs, and consequently we feel that it is relevant to the trial at hand.

Mr. Bustin: We object to that as having any relevance to the particular issue here today.

NORVAL GOSS,

called as a witness on behalf of the defendants, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Bustin:

Q. Do you want to state your name, please? A. My name is Norval Goss.

Q. What is your position with the schools? A. I am the Director of Pupil Personnel.

Q. Can you describe that briefly, what that means? A. That involves keeping records of students attendance, enrollment, personnel records, cumulative files.

Q. For the record, Your Honor, on plaintiff's list of exhibits, this is listed as Exhibit 14.

Mr. Goss, I will hand you what has been marked as Defendant's Exhibit A and ask you to identify that. **(page 72)** A. This is a bulletin which has been sent from my office to principals concerning suspension of students. The date is July the tenth, 1973.

Q. Is the procedure now in force in the Columbus Public Schools? A. Yes, it is.

Q. Mr. Goss, have you had occasion to examine the cumulative records of the particular students which are involved in this litigation? A. Yes, I have.

Q. Have you examined those records in light of their point hours throughout the years? A. Yes.

Q. Mr. Goss, I will hand you what has been marked as Defendant Exhibit B and ask you to identify that. A. This is a sheet listing the number of credits earned during each year and the point average during each year of the students involved. It also gives, with the exception of Betty Crome who has not yet graduated, it gives their high school career.

Q. Is that compilation based upon the cumulative records which are listed on plaintiff exhibit? A. Yes, it is. From the cumulative records, I prepared it personally.

Q. Mr. Goss, has your department of pupil personnel at **(page 73)** any time since March or April of 1971 received any requests from other schools or employers for information concerning the suspension of these particular children? A. I would not be able to say that because the request would go to the individual school rather than to our department.

Q. It goes to the principal? A. Right.

Q. How many credits does it take in the Columbus Public School System to graduate? A. It takes 17.

Q. Mr. Goss, for clarification on Defendant Exhibit B, I notice under Dwight Lopez that for the year 68-69 a figure of two tenths is shown. What does that represent? A. That means that Dwight Lopez passed physical education only that year, the only subject that he passed, was two tenths of a credit in physical education.

Mr. Bustin: I think that's all the questions I have, Your Honor.

CROSS-EXAMINATION

By Mr. Roos:

Q. Mr. Goss, for how long have you been in the Columbus School System? A. Eighteen years. **(page 74)**

Q. Could you describe doing what? A. I started as a teacher, taught for three years; entered an administrative training program for a year; served as assistant principal of several different buildings. For the last three school years I have been in the Department of Pupil Personnel, the last two years as director of that department. The year, previous to that assisting the director of that department.

Q. In your experience in the Columbus School System, recognizing that you are now in pupil personnel, what was the effect on a student with respect to work

missed during the time that they were suspended? Did a student receive a zero for work missed? A. Yes.

Q. This would have an effect ultimately on the grades that a student received; would it not? A. It could have. In these cases it doesn't appear to have.

Q. That's uncertain. You say it doesn't appear? A. It doesn't appear to have. I can't say for sure.

A. But a zero would have an effect? Zero certainly is not a 50 or 100? A. That's right.

Mr. Bustin: Your Honor, I am going to object. I think this is beyond our direct **(page 75)** examination; argumentative.

The Court: I will agree to that.

Mr. Roos: Your Honor, I would like to call this witness as plaintiffs' witness.

The Court: You may go ahead. It's beyond the scope of the direct examination, Mr. Roos, but I am not going to let you call this witness in your own case now, because yo ushould have made that decision before .

I will let you continue your examination along the lines of what harm it will do, even though I consider it beyond the scope of the direct examination.

Mr. Roos: But you are not allowing me to call this witness as the plaintiffs' witness?

The Court: No, I am not.

By Mr. Roos:

Q. In your experience in the school system, are there other harms that can result from being out of school as a suspended student? A. Well, I am not a psychologist and I could not comment as the psychologist has commented. I would have to say that any absence from school can, of course, have negative effects, and that would include suspension from school.

Q. Educational effects, I would gather, is what you are **(page 76)** primarily talking about? A. They can have, not necessarily.

Q. But a zero automatically would have a negative effect, would it not? A. It obviously has a negative effect on that.

Q. Mr. Goss, you mentioned that new rules have been adopted concerning suspensions and expulsions; is that correct? A. This is essentially a statement of the procedures that have been in effect for a number of years.

The Court: Just give him a responsive answer. A. Yes, I am sorry. Yes.

Q. These are defendants Exhibit 14? A. Yes.

Q. Could you tell us the procedure that was utilized in adopting these rules? A. Now, is this the rules, July 10, 1973?

Q. That is correct, the July the 10th rules. A. Mr. Dumaree, who is the deputy superintendent of schools, and is responsible for administration of all the buildings, felt that it was very desirable for us to have a firmly written procedure of what we have always done.

We have relied in the past upon 3313.66 as giving the principal the authority to suspend a student, and we have not felt that it was specifically necessary for us to have a **(page 77)** specific statement of this. Mr. Dumaree felt that we should. He asked me to draft a copy of this.

After several draftings, revisions, consultation with various people in the school system and outside the school system, input from Dr. Ellis, the superintendent, and clearance by a committee of principals, this document was the final product.

Q. Was this document approved by the Board? A. No, this document was not and documents of this type are not normally approved by the Board of Education.

Q. It could be amended without the Board also; is that correct? A. Yes.

Q. In developing procedures, you rely primarily on 3313.66 of the Ohio Statute? A. That is—

The Court: I think this witness has stated that everyone in the educational system, all principals, relied on 3313.66 as the authority to suspend. . .

Mr. Roos: Nothing further of this witness, Your Honor.

The Court: Mr. Bustin, do you have any further questions?

Mr. Bustin: No, Your **(page 78)** Honor. I have no further questions of this witness.

By the Court:

Q. Mr. Goss, may I assume that since this procedure for suspension, which went out from you to all principals on July 10, 1973, may I assume that you are prepared to explain this procedure? A. Yes, sir.

Q. Let's go down to the paragraph or the part of the first page which is designated as suspension procedures. For the sake of my question, let us assume that a pupil at Central High School has engaged in an activity which interfered with the orderly functioning of the school, and a teacher brings that to the attention of the principal.

Let's go on with that language. "Whenever an incident occurs that may lead to a suspension, the principal or assistant principal shall investigate the nature of the alleged offense before commencing suspension procedures."

Tell us what that means? What does he do? What do you contemplate that a principal or an assistant principal would do in the investigation?

A. I think what it means is that they would look into the circumstances that have happened, give the student—call the student in, ask the teacher, ask the student what the situation has been, and get their sides of the story, so to speak. **(page 79)**

Q. No. We are not up to that yet. This procedure enjoins upon the principal or the assistant principal the

duty of investigating the alleged offense before commencing suspension procedures. What does that mean? What does he do? What do you contemplate that a principal or an assistant principal would do under that language? A. I am not sure exactly what you mean.

Q. Let me repeat it to you, Mr. Goss. For the sake of my question, we will assume that a student at the Central High School has been reported by his teacher. Let's say his home room teacher, if there is such a thing today, has been reported by his home room teacher as engaging in an activity which threatens or interferes with the orderly functioning of the school and the teacher comes to the principal's office and says so and so did this. What does the principal, or what is the principal obliged to do under the language of the first sentence there? A. It is our intention that the principal should talk with the student too, rather than just taking.—

Q. He is supposed to investigate it before he talks to the student; isn't he? A. No, that's part of the investigation.

Q. All right. Do you contemplate that you call the student into his office? A. Yes. **(page 80)**

Q. What happens then? A. He would ask the student what had happened too.

Q. Let's assume even that the person who makes the complaint against the student is present, do you contemplate that that person would be present while the student is being questioned? A. That would be at the discretion of the principal.

Q. So, the teacher that reported it may be there or may not be there depending upon the discretion of the principal; is that it? A. Yes.

Q. Let's assume that the teacher is not there. What do you contemplate the principal would say to the student? A. As I say, he would ask the student what had

happened so that he might present his side of the story, so to speak.

Q. Does a principal make any charge against the student at that point? A. Probably. He would say, your home room teacher has said that you did such and such; what do you say?

Q. Suppose the student denies it happens. A. Well, this becomes a matter of the judgment—

Q. You are at a hearing stage, but your language there, if you will look at your plan, in the second sentence, "Unless the pupil is unavailable or unwilling to discuss the incident with the principal. . ." **(page 81)**

Now, mind you, you are investigating the alleged misbehavior by the student. This investigation shall include a discussion with the pupil so that the pupil may be given an opportunity to be heard with respect to the alleged offense.

Are you at the hearing stage or are you at the investigative stage at that point?

A. I am not sure that we had enough legal consideration to make—

Q. What you are saying to the Court is that you don't know whether you are at the investigative stage or the hearing? A. Investigative and hearing in my terms would be very closely intermingled.

Q. Let's assume that you are in a hearing stage then. So far, this is what's happened: The teacher came to you and reported an incident to the principal, and the principal hears the story from the teacher and the principal calls the student into his office.

The teacher may or may not be there, and the student is confronted with this complaint made by his teacher, and he is given an opportunity to explain it or deny it, or admit it; is that correct, at that point?

A. Essentially, yes, I suppose.

Q. Let's assume that after the principal has had the complaint from the teacher and he has had the story or the defense or the explanation from the pupil, the principal decides to **(page 82)** suspend the pupil. At that point do you contemplate under these rules that you have sent out to all the principals that the principal would be acting then under Section 3313.66? A. Yes.

Q. They may suspend up to, is it ten days? A. Up to ten days.

Q. These rules or these guidelines or these suspension procedures that you have published provide that if the principal determines that grounds for suspension do exist, he then suspends the pupil; doesn't he? A. Yes.

Q. What does he say to the pupil- A. He is instructed to tell the pupil the reason for the suspension and the term, the length of the suspension.

Q. This also provides that the principal shall notify the pupil of the exact reason and the length of the suspension. Does he do that verbally or in writing? A. Probably both.

Q. What do you mean probably? A. The student is there — If the student is there, he would inform him that you are suspended for such and such an offense.

Q. And further informs the pupil that the suspension means that he must stay out, must stay — Next he must notify the parent or guardian of the suspension by phone, if **(page 83)** possible, and explain the reason and the length of the suspension. Does that contemplate that the parent or the guardian may not get a written notice of the suspension and the reasons for the suspension? A. No. If they contact them by phone, they would also get a letter.

Q. They would also get a letter. A. But they will attempt to notify them by phone because it is quicker.

Q. In the case of the ordinary suspension, is the pupil ordered off the property immediately? A. Again, it would depend upon whether the principal has been able to get in touch with the parents on the phone and tell them that the student is suspended, and is coming home, or they should come and get them.

Q. Under this plan, Mr. Goss, do you contemplate that the pupil will have the opportunity, except for his own statements, to the principal, to call any witnesses in his own defense? A. That would be the judgment of the principal.

Q. That's up to the principal and not the student; is that it? A. That's right.

The Court: That's all. You may step down. **(page 84)**

HERBERT E. RIE,

called as a witness on behalf of the plaintiffs, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Roos:

Q. Mr. Rie, will you please state your full name for the record. A. Herbert E. Rie.

Q. Could you tell the Court what your present position is? A. Yes, I am chief psychologist at Children's Hospital here in Columbus. I am Professor in the Ohio State University Departments of Pediatrics and Psychology.

Q. In the course of your experience as a psychologist, have you had experience in dealing with children? A. Yes, I deal almost exclusively with children and have for the last 15 years.

Q. In your experience as a psychologist, have you had dealings with children who have been excluded from schools, suspended, expelled, or otherwise? A. Yes.

Q. For how long have you had such sorts of dealings? A. Throughout that 15-year period to which I referred. **(page 85)**

Q. During the course of your experience, have you had an opportunity to observe psychological effects of exclusion from school? A. Yes, I have.

Q. Could you tell this Court the sorts of things that you have observed? A. Yes.

Mr. Bustin: Your Honor, for the record we make the same objection we did to the previous psychologist's testimony as to relevance, and I believe this is cumulative of this.

The Court: Go ahead.

A. My observations over the years have been that the effects of a child being excluded from school are essentially negative, though I would want to put my specific observations in the context that one cannot, of course, speak unequivocally about the adaptation of all individuals to a given circumstance.

There are going to be exceptions and hence it's almost impossible to predict before hand whether all children are going to respond in a given way. The majority, however, in my opinion, respond to a greater or lesser degree in the way that I would like to describe:

First: There is in many cases an impact upon the child's feelings regarding himself. It tends to be a blow to his self **(page 86)** esteem; and

Secondly: It tends to generate feelings of relative powerlessness and helplessness in the child.

It tends further to affect his attitudes toward the school or toward the school system or towards specific school personnel such that he is inclined, following such an episode, to view the school system with greater resentment, suspicion and fear.

It is likely to affect the child further in that certain incidental learning occurs, not intended. It occurs unwittingly. That is by being excluded from school, on the occasion of a problem, there invariably is a problem or suspected problem, the child learns with this termination of communication and interaction that this is the preferred mode of contending with problems, namely that one interposes space and time between those individuals who have encountered the problem between them.

Secondly: It confirms for him that on the occasion of a problem between an individual and an adult in authority over him, in this case the school teacher or the school personnel in his particular school, that given the termination of communication and the exclusion of the child, there can be, for him, little explanation, little understanding, little confirmation of what has actually occurred, what it is that he has done for which he is being excluded in explicit terms, and hence the **(page 87)** likelihood that his own inferences unchecked by any communication with those who have imposed this particular management upon him without the opportunity to check in a sense the reality of his own inferences. These are very often in children who are in trouble likely to be far more devastating than perhaps was intended.

There is furthermore in our experience, particularly if there have been repeated exclusions from school, the probability of the child being stigmatized and treated prejudicially thereafter.

We have a great deal of evidence both with respect to positive expectations on the part of a school system concerning a child, or in this instance negative, that individuals dealing with the school child are likely to contend with him consistent with those expectations and thereby, on the basis of this prior knowledge and expectations, to alter their modes of dealing with them.

In this instance, expecting him in a sense to be a so-called trouble maker, and dealing with him on the basis not of verifiable pre-characteristics of the child but rather

on the basis of the past record of his having been expelled.

Finally, and lastly —

Q. May I interject at this point? A. Yes.

The Court: No. Would you mind letting the doctor conclude finally, **(page 88)** because I will have a couple questions.

Mr. Roos: Fine.

The Court: Go ahead.

A. I wanted to add as a supplement in a sense to what I have said already what I would regard as a number of possible, what I suppose I would call second order effects:

They may or may not occur. They occur in some cases.

Given the circumstances I have referred to thus far, the child is identified as one of the consequences, as the problem, and there is therefore often, not invariably but often, failure to seek the other conditions which interacted with the child to lead to his exclusion from school.

That is if one has identified the problem, one has acted upon it, there is, of course, little need logically to do anything else.

There is then the consequent failure in some cases to seek help for the child if he needs it, because the problem has ostensibly been dealt with, and furthermore the feelings engendered by his behavior that has led to the exclusion are not conducive to sympathetic concern for the child.

There may be general disapproval of the child as a consequence of his expulsion by his family, by neighbors, by acquaintances who then regard him with further suspicion, with expectations that indeed he is going to be a trouble maker, and the child in that sense may be further alienated from resources **(page 89)** than he is already.

Finally: It seems to me there is, in many cases, the child's inability to maintain himself academically and the feelings attendant upon that, particularly if the exclusion is prolonged, or if there are frequent exclusions from school.

By The Court:

Q. Doctor, you frequently used the term the child in the testimony you have just given. Does the term the child include students through the high school years, that is through what we know as the ninth, tenth, and eleventh grades? A. As I am using it, it does, though at the different levels, the different kinds of multiple reactions I have spoken of would generally be experienced in differing degrees.

Q. Doctor, you may or may not know that in Ohio a suspension may not be for more than ten days. Assuming that a suspension from school is for ten days or less, are all of the statements you have made equally valid to this period of ten days? A. Yes, sir, in the context within which I placed them initially that the reaction will vary from child to child and will surely be dependent upon the frequence of any such exclusion for any given child.

The Court: Go ahead.

By Mr. Roos:

Q. With respect to a child who views himself as innocent **(page 90)** and who is not given an opportunity to contest his innocence, would the effects you described be greater or lesser, and to what extent?

Mr. Bustin: Objection, Your Honor.

The Court: I will overrule your objection, but I think I know how the doctor is going to answer that question.

A. I would say that the effects upon a child who has in this sense been unjustly excluded from school might be different, that is with respect to the particular reac-

tions the child has. I have listed a variety of potential reactions.

The child who is in your sense unjustly excluded from school is not as likely to have a blow to his self esteem given what he knows of his own behavior and status as the child with whom that isn't the case. He is far more likely however to react with resentment against the system which has treated him as he would view it, I assume, unjustly.

The Court: Doctor, that's equally true in any other system in life; isn't it?

A. Surely.

The Court: You may proceed.

Mr. Roos: No further questions of this witness, Your Honor.

(page 91)

CROSS-EXAMINATION

By Mr. Bustin:

Q. Doctor, have you had an opportunity to actually examine the respective plaintiffs, children in this particular case? A. I have not.

Q. Have you looked or examined or studied their school records? A. I don't know the plaintiffs.

Q. You don't know at all? A. I do not.

The Court: Let me say, doctor, there are five plaintiffs here.

A. Let me say then, in response to your question, that since our psychology staff at the hospital sees some 1300 children per year, it is conceivable that someone on my staff or I perhaps even have indeed seen one of these plaintiffs, but not in connection with this particular action and not in preparation for it.

Q. I take it by your testimony then you have not examined their school records, their cumulative records? A. I have not.

Q. Have you talked to any of the school officials at any of the schools involved, Marion Franklin, Central, McGuffey? **(page 92)** A. Not about this particular action or the behavior which brings the students here, no. We communicate with the students constantly and, of course, have communications with these particular schools you have mentioned regarding many students and many problems, but again not regarding this particular action.

Mr. Bustin: No further questions, Your Honor.

Mr. Roos: Nothing further of this witness.

By The Court:

Q. Dr. Rie, over the broad range of pupils, whether they are in the primary grades or the secondary grades, who are subjected to a suspension under Ohio Law, do you have any opinion as to whether or not the effects are generally harmful?

Now, I have in mind, of course, the qualification that you made before you started your testimony, but what I sincerely want to know from you is whether or not the disciplinary measure of suspension of a pupil from a primary or a secondary school in Ohio is generally harmful?

A. I would say that generally it is. Modified, however, again by the provision simply that it need not be devastating; that there are few events in the lives of children, single events, which are "so-called traumatic."

We do not assume and have no reason to believe that the **(page 93)** personality development or the full range of an individual subsequent adaptation is ever affected in a significant way by a single occurrence in his life. Typically we are speaking of cumulative effects but the general effect of this kind of action by a school upon a child is harmful even in a mild degree and in contrast from a psychologic prospective.

It is difficult indeed to find anything that would be beneficial in this kind of action save in one instance, in

that instance in which the school child, and I mean the full age range of school, kindergarten through high school, in which the child finds the school situation for whatever reason so tense, so anxiety provoking, so disorganizing in a sense for him that he cannot adapt to it in a useful way that's acceptable.

Under those circumstances of extreme tension, it may be helpful to the child to separate him from that environment temporarily for his own relief; however, as in most instances, children and adults as well react under crisis far better if they have an opportunity to know what the circumstances are, if they are given the chance to predict what is going to ensue, and hence even in that instance from a psychologic prospective, it would be preferable with prior communication about the intent of the action.

Q. Is that your professional way of saying, doctor, that when a student, we will say, at the high school level is charged **(page 94)** with an infraction of the rules or some other activity which threatens the orderly functioning of the class in which he is located, that it is far better to give that person an explanation of what he did and give him an opportunity to defend himself, so to speak? A. I would certainly think so. Again, there are exceptions, of course, to most everything. As I said, one can generalize, but human beings, and if there is an occasion of extreme emergency, obviously one must act immediately. In the instance of a suicide attempt or presumed suicide attempt, anticipated suicide attempt. I am choosing that explicitly not as a school problem but as a psychologic problem. One doesn't wait. One obviously intervenes.

Q. You have to act under, shall we say, the necessity of the expediency of the circumstances? That is to say, if a student, a pretty well-grown, 16-year old goy gets up and strikes a female teacher, he should be removed immediately; is that correct? A. Surely.

Q. If he isn't removed immediately what, if any, effect would that have on the other students, doctor? A. Well, it could be a very negative effect through example, namely that it's possible to do that, and in fact not be dealt with. Q. Wouldn't it encourage these other ones to get up and **(page 95)** sock the teach also? A. It might. I would say, yes, but I think removing the child from the immediate circumstances, the class room or the game, or whenever it might have occurred, is not necessarily to imply that he should be suspended, but rather that something useful should be done about the particular infraction.
would assume the circumstances under which it occurred, why it occurred.

Q. Does that mean, or do you think that socking a teacher is some times defensible? A. No. On the contrary, I think it's totally indefensible.

Q. Doctor—and I ask this question quite sincerely too—assuming that the practice of suspension as a disciplinary measure does not do the job for which it is intended, what do you suggest as a substitute for suspension? A. Well, I think in part, Your Honor, we are getting into a field, school administration, which is out of my range of competence. That is my reason for being here, is to comment on the potential psychologic effects of this particular action.

It is conceivable even if I assumed that this was inequivocally in al lcases negative, that would still would have to result to the —

Q. You can testify as a trained and experienced clinical **(page 96)** psychologist. You have devoted some time here to pointing out the harmful effect of the suspension of a child from his ordinary course at school. I don't think any right minded person would deny the fact that the interruption of schooling is going to have some effect upon a child. Some more harmful than others, but given

the necessity for maintaining order in a classroom, and in a school, and given the necessity for the respect of property rights, psychologically what should be done with a child who has, let's say, a flagrant infraction of a rule of the school. A. Well, all right, I will pursue that.

Q. In lieu of suspension. A. It seems to me the first step would be to determine the basis for that, or the reason for that particular action on the part of the student, explicitly and in detail. A psychologic status of the student that makes it impossible for him to deal with anger or whatever the feeling.

Q. Does that mean that that particular student would have to be subjected to rather extensive psychological testing and investigation? A. He might but on the other hand it would be —

Q. Who would do that? A. — useful initially to determine what one can from his prior school history since it is in that contact that the behavior occurred. **(page 97)**

Q. Who would make such an investigation? A. Typically there are certain school personnel available, school psychologists, guidance counsellors available to the principal if he would want to pursue it. Certainly in conjunction with the parents and one of the problems is that the parents are not consulted by the schools until the school is ready to take some action. Other outside agencies are available.

Q. On that point, doctor, if school authorities had the opportunity to consult with parents when an incident occurs and before the imposition of suspension, do you consider that that would be helpful in the resolution of the problem with the child? A. Yes, potentially I can't guarantee that it would be helpful in all cases, but certainly one ought to make that effort since the parents

constitute the other major influence available to the schools in the child's immediate life.

Q. Unfortunately it seems that parents don't constitute the major influence, and though they should by and large be the major influence. A. They may not constitute the kind of influence upon the child in all cases that the rest of society would hope, but because they are major influences on what they have done, or have not done, is not really, I don't think, justifiably arguable. **(page 98)**

There are other agencies available to the schools. As an example the Children's Mental Health Clinic located next to the University has a program. There is a Court Consultation Unit which that same Mental Health Center operates in conjunction with the Family Relations Court here in Columbus, and there are other agencies; the Diocesean Child Guidance Center, and indeed our own Children's Hospital which has some 120,-130,000 out patient visits a year.

There are resources if they don't exist within the school system for determining the basis for the child's behavior and hopefully for contributing to the development of some plan that the school might undertake in dealing with the child or having others deal with the child if it proves to be a serious and chronic problem.

Q. Doctor, if a procedure were, let us say, adopted by the Columbus Public Schools under which a student who was charged with an infraction or a violation of the rules, for whatever reason, were given a hearing before the principal or the vice principal of such a school, would it be advisable or helpful to require the presence of both parents or at least one parent at such a hearing? A. I would put it rather that it would be desirable for the parents to be there, and at least to have the opportunity

to be there. Whether one wants to specify that they must be there, you have used the word required to be there, I don't know. **(page 99)**

If they were not inclined to be there when given the opportunity, requiring them to be there is not likely in view of our past experience of trying to impose help in a sense on people is not likely to yield favorable results, but certainly the opportunity to be there, yes.

Q. I suppose, doctor, your answer means that the school authorities could not require the involvement of the parents in any disciplinary procedure? A. Well, I assume.

Q. Wouldn't it tell you a great deal about the behavior of a child if a parent or parents were given the opportunity to attend a suspension hearing and they deliberately declined to participate in it? A. It would certainly focus on one of the likely reasons for the child not functioning in a socially accepted way, yes.

The Court: Thank you, doctor. You may leave the witness stand.

FLOYD PRESTON HORTON,

called as a witness on behalf of the plaintiffs, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Roos:

Q. Please state your name for the record. A. Floyd Preston Horton. **(page 100)**

Q. Mr. Horton, could you briefly describe your educational background? A. Yes. I have a Bachelor of Science degree in music from West Virginia State College; a Master's degree in guidance and counselling from Marshall University, and I am presently in the doctoral program in educational administration at Ohio State University.

Q. Please state your employment background insofar

as it relates to schools and the field of education. A. I have served as a teacher of math and science with the Southwestern City Schools for one year, 67-68 year; the students that I worked with were described as "emotionally disturbed." They were the children from the Franklin County Children's Home.

I have spent four years as a high school guidance counsellor at Linden McKinley High School here in Columbus.

Q. What four years were those? A. 1968 through 1972, and I have worked in summer programs, drop out prevention projects, two summers, here in Columbus. It is a part of the Columbus Public Schools, and I have worked one year at the Columbus Children's Psychiatric Hospital as a social studies teacher. That was one summer.

Q. Could you describe briefly the duties of a guidance counsellor in the Columbus School System? A. Well, I would like to describe them in a general way **(page 101)** because the duties, depending on where one serves, can be, you know, fixed to that school, but in general there are three areas in which a counsellor tries to work with students, and that's in the personal development or what you would call individual counselling with the student and the educational aspects in terms of arranging your schedule for courses, course sequence, and in planning for whatever course of study you may want to take after high school, post high school; whether it be vocational or college or whatever, and of course in terms of career aspects of guidance.

You want to try to help students to tune into what types of jobs and their levels in family clusters that are available and so they can see where they might be able to fit into occupations or career goal.

Q. In your experience as a guidance counsellor, did you have an opportunity to observe the educational effects of a suspension? A. Yes. I would like to say that the things that I observed about educational suspension

are, first of all, that a student, and this is nothing earth shaking or earth shattering, but a student misses that work that goes on, and all the other activities of the school then when they are not there, when they are not present, and many cases they are not allowed to make up the work, so that of course affects not only —

(page 102)

The Court: Mr. Horton, the student is not allowed to make up the work. Then does that mean there is no provision made in the school itself for a teacher to take that child and say, now we are going to go over the lesson that you would have learned or studied the first day, the second day, the third day, and the fourth day? What do you mean by saying that the child is not allowed to make up the work?

A. Well, I am saying that in my experience is that each teachers are not disposed to, and/or not necessarily required. Required, yes, to let a student, to allow a student make up work that was done during the time that they were suspended.

Now, I am not saying that this does not happen in any cases, because the teacher can do that and some do, some do allow them to make it up and will give the assignments to another student to take to them, but I am saying this is not the general rule in my experience.

Q. Students who are suspended usually receive zeros or F's on work missed? A. Yes. They don't get credit for work that they don't do.

Q. Are there times of the year, special times of the year, when a suspension given during those times can be especially damaging? A. Yes. There are many activities that occur during the **(page 103)** course of a school year in terms of contests, tests, different kinds of award things that you may apply for or you may be recommended to participate in.